Also, a bill (H. R. 7148) granting a pension to Lucinda Belle Burbridge; to the Committee on Invalid Pensions.

Also, a bill (H. R. 7149) granting a pension to Elizabeth Tysinger; to the Committee on Invalid Pensions.

Also, a bill (H. R. 7150) granting a pension to Charles Booth; to the Committee on Invalid Pensions.

Also, a bill (H. R. 7151) granting a pension to Mary Amonett; to the Committee on Invalid Pensions.

By Mr. RAKER: A bill (H. R. 7152) for the relief of Lilly O. Dyer; to the Committee on Foreign Affairs.

By Mr. REECE: A bill (H. R. 7153) authorizing the President to appoint J. H. S. Morison to the position and rank of major, Medical Corps, in the United States Army; to the Committee on Military Affairs.

By Mr. REID of Illinois: A bill (H. R. 7154) for the relief of Joliet Forge Co., Joliet, Ill.; to the Committee on Claims.

By Mr. ROBSION of Kentucky: A bill (H. R. 7155) granting an increase of pension to Emily Robinson; to the Committee on Invalid Pensions.

By Mr. SANDERS of New York: A bill (H. R. 7156) for the relief of Maurice E. Kinsey; to the Committee on Claims.

By Mr. SNELL: A bill (H. R. 7157) granting an increase of pension to Myra B. Hall; to the Committee on Invalid Pensions.

By Mr. SOMERS of New York: A bill (H. R. 7158) granting a pension to Annie Coughlin to the Committee on Invalid Pensions.

By Mr. SPEAKS: A bill (H. R. 7159) granting an increase of pension to Mary C. Morton; to the Committee on Invalid Pensions.

Also, a bill (H. R. 7160) granting an increase of pension to Sarah C. Stites; to the Committee on Invalid Pensions.

Also, a bill (H. R. 7161) granting an increase of pension to Annie Evans; to the Committee on Invalid Pensions.

By Mr. TABER: A bill (H. R. 7162) granting an increase of pension to Mary E. Ferguson; to the Committee on Invalid Pensions.

By Mr. TAYLOR of Tennessee: A bill (H. R. 7163) granting an increase of pension to Thomas M. Woods; to the Committee on Pensions.

Also, a bill (H. R. 7164) granting an increase of pension to Thomas E. Shehan; to the Committee on Pensions.

Also, a bill (H. R. 7165) granting a pension to Patrick S. Horton; to the Committee on Pensions.

Also, a bill (H. R. 7166) granting a pension to Jennie Creswell; to the Committee on Invalid Pensions.

By Mr. TAYLOR of West Virginia: A bill (H. R. 7167) granting a pension to M. F. Larrison; to the Committee on Pensions.

By Mr. SUTHERLAND: A bill (H. R. 7168) for the relief of the owner of schooner *Sentinel;* to the Committee on Claims.

By Mr. UNDERWOOD: A bill (H. R. 7169) granting a pension to Edward H. Packer; to the Committee on Pensions.

By Mr. WATSON: A bill (H. R. 7170) for the relief of Josiah Ogden Hoffman; to the Committee on Naval Affairs.

PETITIONS, ETC.

Under clause 1 of Rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

285. By Mr. CARSS: Petition of the Federated Trades Assembly of Duluth, Minn., protesting the proposed Bread Trust combination; to the Committee on Interstate and Foreign Commerce.

286. By Mr. CARTER of California: Petition of the New Orleans Cotton Exchange, in reference to the supply of farm labor in the cotton States; to the Committee on Immigration and Naturalization.

287. By Mr. FULLER: Petition of the Illinois Press Association, opposing the printing of stamped envelopes by the Government; to the Committee on the Post Office and Post Roads.

288. Also, petition of the Illinois Press Association, protesting against the printing of return cards on Government stamped envelopes; to the Committee on the Post Office and Post Roads.

289. Also, petition of J. M. Wells Post, No. 451, Department of Ohio, Grand Army of the Republic, urging prompt action by Congress to increase the pensions of Civil War veterans and widows; to the Committee on Invalid Pensions.

290. Also, petition of George Leland Edgerton Camp, No. 32, United Spanish War Veterans, Beaver Dam, Wis., favoring enactment of H. R. 98, for the relief of veterans of the Spanish War; to the Committee on Pensions.

291. Also, petition of Mathia Klein & Sons, of Chicago, protesting against the present postal rates; to the Committee on the Post Office and Post Roads.

292. By Mr. KIESS: Evidence in support of H. R. 1907, granting an increase of pension to Esther E. Wheeler; to the Committee on Invalid Pensions.

293. By Mr. REECE: Petition of Lieut. H. L. McCorkle Camp, No. 2, United Spanish War Veterans, National Sanatorium, Tenn., in behalf of Senate bill 98; to the Committee on Pensions.

294. By Mr. SNELL: Petition for scientific inspection of a device for preventing ships of any size and type from sinking, protected by United States patent 1355656, October 12, 1920, and named Auythistos, and the adoption of same by the proper naval authorities for the benefit of the American marine; to the Committee on Naval Affairs.

295. By Mr. SWARTZ: Evidence in support of H. R. 5650, for the relief of Mrs. Lizzie Shuman; to the Committee on Invalid Pensions.

SENATE

FRIDAY, *January 8, 1926*

(Legislative day of Thursday, January 7, 1926)

The Senate reassembled at 12 o'clock meridian, on the expiration of the recess.

Mr. CURTIS. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

Bayard	Fess	King	Schall
Blease	Fletcher	La Follette	Sheppard
Borah	Frazier	Lenroot	Shipstead
Bratton	George	McKellar	Shortridge
Brookhart	Gerry	McKinley	Simmons
Broussard	Gillett	McLean	Smith
Bruce	Glass	McMaster	Smoot
Butler	Goff	McNary	Stanfield
Cameron	Gooding	Mayfield	Stephens
Capper	Greene	Means	Swanson
Caraway	Hale	Metcalf	Trammell
Copeland	Harreld	Neely	Tyson
Couzens	Harris	Norris	Wadsworth
Curtis	Harrison	Oddie	Walsh
Dale	Heflin	Overman	Warren
Deneen	Howell	Pepper	Watson
Dill	Johnson	Pine	Wheeler
Edge	Jones, N. Mex.	Reed, Mo.	Williams
Edwards	Jones, Wash.	Robinson, Ark.	Willis
Fernald	Kendrick	Robinson, Ind.	
Ferris	Keyes	Sackett	

The VICE PRESIDENT. Eighty-two Senators having answered to their names, a quorum is present.

REPORT OF CHESAPEAKE & POTOMAC TELEPHONE CO.

The VICE PRESIDENT laid before the Senate a communication from the president of the Chesapeake & Potomac Telephone Co., transmitting, pursuant to law, the annual report of that company for the year 1925 (the month of December being estimated), which was referred to the Committee on the District of Columbia.

PETITIONS AND MEMORIALS

Mr. WILLIS presented resolutions adopted at a mass meeting held in the Hippodrome Theater at Marietta, Ohio, under the auspices of the Ministerial Association of that city, favoring the participation of the United States in the Permanent Court of International Justice, which were ordered to lie on the table.

He also presented the memorial of Julia Vansky and sundry other citizens of Columbus, Ohio, remonstrating against affiliation of the United States with the League of Nations or participation in the Permanent Court of International Justice, which was ordered to lie on the table.

He also presented a petition of sundry citizens in the State of Ohio, praying for the repeal of the so-called war tax on industrial alcohol used in the manufacture of medicines, home remedies, and flavoring extracts, which was referred to the Committee on Finance.

ENLARGEMENT OF THE CAPITOL GROUNDS

Mr. FERNALD, from the Committee on Public Buildings and Grounds, to which was referred the bill (S. 2005) for the enlargement of the Capitol Grounds, reported it without amendment and submitted a report (No. 21) thereon.

BILLS INTRODUCED

Bills were introduced, read the first time, and by unanimous consent, the second time, and referred as follows:

By Mr. DILL:

A bill (S. 2297) to provide for handling and rate of pay for storage of closed-pouch mail on express cars, baggage cars, and express-baggage cars, and for other purposes; to the Committee on Post Offices and Post Roads.

By Mr. WADSWORTH:

A bill (S. 2298) to amend section 3 of the act approved September 14, 1922 (chap. 307, 42 Stat. L., part 1, p. 840 to 841); to the Committee on Military Affairs.

A bill (S. 2299) granting the consent of Congress to the Wakefield National Memorial Association to build, upon Government-owned land at Wakefield, Westmoreland County, Va., a replica of the house in which George Washington was born, and for other purposes; to the Committee on Public Buildings and Grounds.

By Mr. FERNALD:

A bill (S. 2300) granting an increase of pension to Laura E. Collins (with accompanying papers); to the Committee on Pensions.

By Mr. WARREN:

A bill (S. 2301) authorizing the Shoshone Tribe of Indians of the Wind River Reservation in Wyoming to submit claims to the Court of Claims (with accompanying papers); to the Committee on Indian Affairs.

A bill (S. 2302) for the relief of Elisha K. Henson (with accompanying papers); to the Committee on Claims.

By Mr. COPELAND:

A bill (S. 2303) granting a pension to Harriet I. Gardiner; to the Committee on Pensions.

By Mr. STANFIELD.

A bill (S. 2304) to amend an act entitled "An act to authorize the sale of burnt timber on the Public Domain," approved March 4, 1913; to the Committee on Public Lands and Surveys.

By Mr. SHEPPARD:

A bill (S. 2305) to correct the military record of Sidney Lock; to the Committee on Military Affairs.

By Mr. CAMERON:

A bill (S. 2307) authorizing sale of certain lands to the Yuma Chamber of Commerce, Yuma, Ariz.; to the Committee on Public Lands and Surveys.

By Mr. SCHALL:

A bill (S. 2308) to provide study periods for post-office clerks, terminal, and transfer clerks; and

A bill (S. 2309) to reduce night work in the Postal Service; to the Committee on Post Offices and Post Roads.

By Mr. REED of Pennsylvania (by request):

A bill (S. 2310) to amend the World War veterans' act, 1924; to the Committee on Finance.

By Mr. STANFIELD:

A bill (S. 2311) to define trespass on coal land of the United States and to provide a penalty therefor; to the Committee on Public Lands and Surveys.

ADJUSTMENT OF DISPUTES BETWEEN CARRIERS AND THEIR EMPLOYEES

Mr. WATSON introduced a bill (S. 2306) to provide for the prompt disposition of disputes between carriers and their employees, and for other purposes, which was read twice by its title and referred to the Committee on Interstate Commerce.

Mr. WATSON. In connection with the bill which I have just introduced, I ask unanimous consent that there may be printed in the RECORD the statement which I send to the desk.

There being no objection, the statement was referred to the Committee on Interstate Commerce and ordered to be printed in the RECORD, as follows:

Mr. Alfred P. Thom, general counsel of the Association of Railway Executives, and Mr. Donald R. Richberg, general counsel for the organized railway employees, upon being interviewed this afternoon, gave out the following statement:

"The President of the United States has in more than one message to Congress invited the rail carriers and their employees to confer in the effort to agree upon a method of adjusting labor disputes which will not only be mutually satisfactory and protective of their just rights, but which will also properly safeguard the interests of the public.

"Pursuant to this suggestion representatives of the railroads and representatives of the employees of the carriers have from time to time for a number of months been in conference. An agreement has now been reached, and a bill to carry it into effect will be presented to Congress in the immediate future. The provisions of the bill may be summarized as follows:

"First. That it shall be the duty of the parties to exert every reasonable effort to make and maintain agreements.

"Second. Any and all disputes shall be first considered in conference between the parties directly interested.

"Third. Adjustment boards shall be established by agreement, which shall be either between an individual carrier and its employees, or regional or national. These adjustment boards will have jurisdiction over any dispute relating to grievances or to the interpretation or application of existing agreements, but will have no jurisdiction over changes in rates of pay, rules, or working conditions.

"It is, however, provided that nothing in the act shall be construed to prohibit an individual carrier and its employees from agreeing upon settlement of disputes through such machinery of contract and adjustment as they may mutually establish.

"Fourth. A board of mediation is created, to consist of five members appointed by the President, by and with the advice and consent of the Senate, with the duty to intervene at the request of either party or on its own motion, in any unsettled labor dispute—whether it be a grievance or a difference as to the interpretation or application of agreements not decided in conference or by the appropriate adjustment board, or a dispute over changes in rates of pay, rules, or working conditions not adjusted in conference between the parties. If it is unable to bring about an amicable adjustment between the parties it is required to make an effort to induce them to consent to arbitration.

"Fifth. Boards of arbitration are provided for when both parties consent to arbitrate, also the method of selecting members of the boards and the arbitration procedure. Any award made by the arbitrators shall be filed in the appropriate district court of the United States and shall become a judgment of the court, binding upon the parties.

"Sixth. In the possible event that a dispute between a carrier and its employees is not settled under any of the foregoing methods, provision is made that the board of mediation, if in its judgment the dispute threatens to substantially interrupt interstate commerce, shall notify the President, who is thereupon authorized, in his discretion, to create a board to investigate and report to the President within 30 days from the date of the creation of the board. It is also provided that after the creation of such a board and for 30 days after it has made its report to the President, no change except by agreement shall be made by the parties to the controversy in the conditions out of which the dispute arose.

"It is believed by the representatives of the carriers and the employees that the creation of the machinery mentioned and the opportunity and the obligation to pursue the methods provided will result in the amicable adjustment of all future labor disputes and prevent any interruption of transportation."

CHANGE OF REFERENCE

On motion of Mr. JONES of Washington, the Committee on Military Affairs was discharged from the further consideration of the bill (S. 1835) granting the consent of Congress to George Washington-Wakefield Memorial Bridge, a corporation, to construct a bridge across the Potomac River, and it was referred to the Committee on Commerce.

AMENDMENTS TO TAX REDUCTION BILL

Mr. KING submitted an amendment intended to be proposed by him to House bill No. 1, the tax reduction bill, which was referred to the Committee on Finance and ordered to be printed.

Mr. SHEPPARD submitted an amendment intended to be proposed by him to House bill No. 1, the tax reduction bill, which was referred to the Committee on Finance and ordered to be printed.

PRESIDENTIAL APPROVAL

A message from the President of the United States, by Mr. Latta, one of his secretaries, announced that on January 7, 1926, the President approved and signed the joint resolution (S. J. Res. 20) providing for the filling of a vacancy in the Board of Regents of the Smithsonian Institution of the class other than Members of Congress.

AMERICAN AND IMPERIAL TOBACCO COMPANIES (S. DOC. NO. 34)

The VICE PRESIDENT laid before the Senate the following message from the President of the United States, which was read, and, with the accompanying report, ordered to lie on the table and to be printed:

To the Senate:

I transmit herewith for the information of the Senate the report of the Federal Trade Commission of its investigation of charges against the American Tobacco Co. and the Imperial Tobacco Co., made in response to Senate Resolution No. 329, Sixty-eighth Congress, second session, dated February 9, 1925.

CALVIN COOLIDGE.

THE WHITE HOUSE, *January 8, 1926.*

SENATOR FROM NORTH DAKOTA

The Senate resumed the consideration of the following resolution (S. Res. 104) reported from the Committee on Privileges and Elections:

Resolved, That GERALD P. NYE is not entitled to a seat in the Senate of the United States as a Senator from the State of North Dakota.

Mr. STEPHENS. Mr. President, three members of the Committee on Privileges and Elections filed a minority report in the matter that is now before the Senate. The conclusion reached by those three Senators is that the Governor of North Dakota had authority to make a temporary appointment to fill the vacancy occasioned by the death of Senator LADD, and that GERALD P. NYE is entitled to a seat in the Senate of the United States as a Senator from the State of North Dakota. There are several very interesting legal propositions involved. One of those is the question that grows out of a constitutional provision contained in section 78 of the constitution of the State of North Dakota. I shall not read the provision, but shall insert it in my remarks if I may have permission.

The VICE PRESIDENT. Without objection, permission is granted.

The section is as follows:

When any office shall from any cause become vacant and no mode is provided by the constitution or law for filling such vacancy, the governor shall have power to fill such vacancy by appointment.

Mr. STEPHENS. It is not my purpose to discuss that provision of the constitution of the State of North Dakota. I shall content myself simply with saying that a very strong argument might be made to the effect that under that provision of the State constitution the Governor of North Dakota did have the right and was authorized to appoint and to commission Mr. NYE as a Senator from that State. When we consider the history of the Constitution of the United States and all those things that grow out of it and were connected with it, including the relation of the States to the Federal Government, a very strong argument might be made that, due solely and alone to that provision of the constitution, the governor of the State was within his rights when he commissioned Mr. NYE. I simply direct attention to it. That particular legal proposition will be discussed by the able Senator from West Virginia [Mr. NEELY] and I pass from it, leaving that to him.

There are other questions involved that will be discussed by the able Senator from South Carolina [Mr. SMITH]. It is my purpose to direct attention to two propositions. I contend, Mr. President, that the Governor of North Dakota was empowered to issue the commission to Mr. NYE and that Mr. NYE is therefore entitled to a seat in this body.

The first proposition that I shall present is that a United States Senator is a State officer. I realize full well that there has been a great deal of consideration given to the status of a United States Senator, as to whether he is a United States officer, a State officer, or an unnamed something.

Some arguments that have been made through the years would leave him a mere nondescript, a nameless something, a person, of course, performing certain functions but not classified. It has been held by some authorities and in some cases that for certain reasons and for certain purposes a Senator is a civil officer of the United States; for instance, for the purpose of being required to take an oath to support the Constitution of the United States. In other cases it has been held that under certain conditions he will be regarded as a legislative officer of the Federal Government. In other cases it has been held that he is not a civil officer of the Federal Government.

Very respectable authorities have announced the proposition that he is a State officer, and I shall contend most earnestly, Mr. President, that for the purposes of this case, in connection with the circumstances of this matter, Mr. NYE is a State officer. We speak of district officers in our States. What does that mean? Officers elected by the people of a district. We speak of county officers, referring to officers elected by the people of a county. We speak of State officers, referring to officers elected by the people of a State.

It was suggested on yesterday by the Senator from West Virginia [Mr. GOFF] that the labor and activities of a Senator are performed here in the Senate at Washington; that he is acting in a legislative capacity; that he is paid by the Federal Government; that no part of his salary comes from the State. That is all very true, but I ask the Senator these questions: Who elect a United States Senator? The people of the State. Who commissions a United States Senator? The governor of the State from which he comes. Who appoints a United States Senator to fill a vacancy? The governor of the State.

Mr. President, of course the Constitution provides that there shall be United States Senators; it provides the character of their duties, and so forth; the laws passed by Congress make provision for the National Government to pay the salaries of Senators; but the phrase "United States Senator" is nothing but a phrase, nothing but an aggregation of words. There can not be a United States Senator until a person shall have been named as such either by the people of the State from which he comes or by the governor of that State. In either event his commission, his authority to act, his grant of power, rest in the commission which is signed by the governor of the State.

So, Mr. President, we see that, although there is such a thing as a United States Senator, there can be no United States Senator really, effectively, and effectually until the people of the State and the governor of the State shall have acted. Suppose a man should come here without a commission from the governor, of course he would not be recognized and would have no rights. His power to act, his power to serve, his power to become a legislator for the Federal Government reside solely and alone in the power of the people of the State and the governor of the State to act.

So, as I have stated, a man may be a United States Senator and be considered as a Federal officer for the purpose of being required to take an oath to support the Constitution; he may be considered as such for the purpose of being regarded as a legislative agent, a legislator; but, in the real sense, his right to act, his right to take the oath, his right to participate in legislative functions, all go back to the original source of power—to the right of the people of the State and of the governor of the State to act, to elect, to appoint, to commission.

Mr. President, I have said that I have found very respectable authority for my contention that a United States Senator is a State officer. In a book, the title of which is "The Government of the United States," written by Dr. William Bennett Moore, professor at Harvard, I find a broad, bold statement to that effect. After discussing the nature of our Government, the Constitution of our Government, the provisions of law affecting Members of the House of Representatives and Members of the Senate, and so on, he says this:

Congress accordingly is a bicameral convention of State envoys; its Members are officers of the State from which they come—

He was not content with saying that they are officers of the State from which they come; his sentence did not end with that language, but he concludes—

and are not officers of the National Government.

I know very little of this author, but, judging from the position that he holds, or has held at least, I presume that he is an able man, a man of intellect and learning, a man who knows something about the subject he discusses, and he says that United States Senators are State officers and "are not officers of the National Government."

Again, Tucker, in his Constitutional Law, says this:

Nowhere in the Constitution—

Referring, of course, to the Constitution of the United States—

is a Senator or Representative spoken of as an officer of the United States, or even as an officer at all, and in article 1, section 6, clause 2 of the Constitution, the distinction between a Senator and a Representative and a civil officer of the United States is very clearly set forth.

Again, Mr. Tucker says:

States, not men, are constituents of the Senate.

On yesterday the Senator from West Virginia referred to Story on the Constitution. It seems to me, Mr. President, that this authority supports my contention rather than the contention of the Senator from West Virginia. Before quoting from Story I will say that this question was considered in the early days of the history of our country. In the Fifth Congress an effort was made to impeach William Blount, a United States Senator. I recall the argument presented by the Senator from West Virginia, and I wish to state that, from my reading, I have reached the conclusion that the proceeding in that case was dismissed on the ground that William Blount, a Senator spoken of as a Senator of the United States, was not a United States officer.

Judge Story, in that part of his writings that was referred to by the Senator from West Virginia on yesterday, says this:

A question arose upon an impeachment before the Senate in 1799, whether a Senator was a civil officer of the United States, within the purview of the Constitution, and it was decided by the Senate that he was not.

It was decided in those early days that, although referred to generally as a United States Senator, he was not a United States officer.

Judge Story says further:

But it was probably held that "civil officers of the United States" meant such as derived their appointment from and under the National Government and not those persons who, though members of the Government, derived their appointment from the States or the people of the States.

Mr. Story recognized the fact that there are certain persons connected with the administration of the affairs of the Nation, performing certain functions, who derive their authority so to act and to occupy certain positions from the States and from the people of the States; and if that be true, I contend, Mr. President, that such a person is a State officer.

Mr. GOFF. Mr. President, will the Senator yield?

The VICE PRESIDENT. Does the Senator from Mississippi yield to the Senator from West Virginia?

Mr. STEPHENS. I yield; yes.

Mr. GOFF. May I ask the Senator from what source of power or authority the State of North Dakota obtained the right either to appoint or to elect a representative in the Senate of the United States?

Mr. STEPHENS. Mr. President, if I should discuss that proposition fully it would carry us back to the time when the Federal Constitution was written. I want to say, in answer to the Senator's question, that if we simply look to the language of the Constitution it might appear that the authority resides in the seventeenth amendment to the Constitution, because it is stated there that the United States Senate shall be composed of two Senators from each State. Then it provides for the election of those Senators and for making temporary appointments to fill vacancies, and so forth; but, Mr. President, there is more involved in the proposition than the seventeenth amendment.

Mr. GOFF. Mr. President, may I ask the Senator another question in that connection, without meaning to interrupt his line of thought?

The VICE PRESIDENT. Does the Senator from Mississippi further yield to the Senator from West Virginia?

Mr. STEPHENS. Certainly.

Mr. GOFF. Without the provisions of the United States Constitution, to which reference was made yesterday, and to which the Senator has referred, there would be no authority whatsoever in any State either to elect or to appoint a United States Senator, would there?

Mr. STEPHENS. I might say, too, in that connection that without the action of the people of the State and the governor of the State, there could be no such thing as a United States Senator.

Mr. GOFF. Then does not the Senator admit that the origin of the power or the authority on the part of any State to appoint or elect a Senator springs from the Constitution of the United States, both the old Constitution and the new Constitution after it was amended?

Mr. STEPHENS. I will say in answer to that, Mr. President, that as a matter of course when the Constitution was written, when it was adopted by the people of the United States and ratified by the States, it became a contract, an agreement; but there were certain powers retained by the States. There are certain inherent powers in the States; and in this particular kind of matter there is an inviolable power, a power that can not be taken away from the States, regardless of the action of the National Government, regardless of the action of the Senate and the Members of the House, regardless of the action of 47 of the 48 States of the Union; and that is that each State shall be entitled to be represented in this body by two Senators.

Mr. SHIPSTEAD. Mr. President——

The VICE PRESIDENT. Does the Senator from Mississippi yield to the Senator from Minnesota?

Mr. STEPHENS. Yes; I yield.

Mr. SHIPSTEAD. Is it not a fact that whatever the Constitution of the United States has to do with the office of Senator or his election, it got that authority originally from the States themselves?

Mr. STEPHENS. Certainly.

Mr. SHIPSTEAD. The States retained certain sovereignty and delegated a part to the Federal Government under the Constitution, and there would be nothing in the Constitution about United States Senators if the States themselves had not formed the Constitution and delegated that power to the Federal Government.

Mr. STEPHENS. The Senator has said in a much better way than I could have said what I was trying to say.

Mr. GOFF. Mr. President——

The VICE PRESIDENT. Does the Senator from Mississippi further yield to the Senator from West Virginia?

Mr. STEPHENS. I do.

Mr. GOFF. I should like to finish the questions; and I am very sorry to interrupt the Senator, but I want to bring out these matters.

Mr. STEPHENS. It is perfectly all right, sir.

Mr. GOFF. In connection with the question just asked the Senator from Mississippi by the Senator from Minnesota, it is a fact, is it not, speaking constitutionally, that the States reserved only the powers they did not delegate to the Federal Government, and that all powers which the States delegated to the Federal Government they did not reserve, and over those powers they have no control or jurisdiction whatsoever?

Mr. STEPHENS. That is very true in a general sense.

Mr. GOFF. In that connection may I not ask the Senator one other question:

If, as a legal proposition, A should request B to appoint for A an agent and in the execution of that commission B should proceed to appoint an agent for A, after making such appointment and clothing this agent with full authority would this agent be the agent of A or the agent of B?

Mr. STEPHENS. I will ask the Senator this question on the subject of agency: It seems that he regards a United States Senator as an agent. Does the Senator regard him as an agent of the Federal Government, or as an agent of the State government?

Mr. GOFF. Of the Federal Government; and I am using the word "agent" in its broad generic sense of the highest type of representative.

Mr. STEPHENS. Mr. President, in answer to this proposition I will say what I was trying to say a moment ago—that certain powers were delegated to the Federal Government by the States. Of course, the Federal Government has the right to exercise those powers. Certain powers were reserved to the States by a general clause in the Constitution; but one specific right was reserved in direct and positive language, and that was the right of each State to have in this body two Senators, and that no State can be deprived of the right to be represented here by two Senators except by its own will.

As I indicated a moment ago, the Constitution may be amended in many particulars. An amendment may be wise or foolish; it may be good, bad, or indifferent; but if three-fourths of the States ratify it, it becomes a part of the Constitution of the United States. Three-fourths, yea, indeed, 47 of the 48 States, can not deprive a single State of its right of representation. That is written into the Constitution of the United States itself.

Going back to what the Senator from West Virginia had to say, of course the phrase "United States Senator" or "Senator of the United States" is a part of the Constitution of the United States. That language need not appear in the constitution of a State. That provision of the Constitution provides that there shall be a Senate, that the Senate shall perform certain functions, that a Senator shall have certain duties, and so forth.

It provides simply a forum; it gives a name to certain persons who shall perform certain duties and certain functions; but we get back to my original proposition that the phrase has no breath of life in it; it is inert, inactive, a dead and useless thing, until the State has acted, the people have voted, and the governor has issued his commission. In other words, the Constitution of the United States provides a forum, a place of action, and it gives a name—a mere name, a designation, if you please—to the officer that shall be delegated by the State to represent it in that forum. But the right of an individual to present a commission and have the right to a seat in the Senate are based upon the authority specifically reserved of the State to select and commission him.

Mr. President, going back to a case cited by the Senator from West Virginia [Mr. GOFF] on yesterday, I now call attention to the Burton case in 202 United States Reports; and I might call attention to several cases.

Mr. GEORGE. Mr. President——

The VICE PRESIDENT. Does the Senator from Mississippi yield to the Senator from Georgia?

Mr. STEPHENS. I yield; yes.

Mr. GEORGE. Before the Senator passes to a consideration of the specific cases, recalling what he has had to say generally about the Constitution of the Federal Government and the delegation of powers thereto by the States, I want to direct the Senator's attention just to this thought, because I shall perhaps make some remarks on this matter, and I expect to deal with it from this angle:

It is quite true, of course, that the States existed before the Federal Government existed. It is quite true, of course, that the general Government could not exist if the States were to be at once dissolved; but it is also true, is it not—and I take it that there will be no dispute on this point—that when the States adopted the Federal Constitution, the States nevertheless created a sovereignty here?

There would be no dispute about what the States did. They created here in the General Government a complete and supreme sovereignty. In other words, the States delegated to the General Government certain powers. Those powers are pre-

cisely defined; they are expressly enumerated. With respect to those powers the States can have nothing whatever to do. I am suggesting this thought to the Senator because, when we look at the question broadly, since a Senator of the United States can not exercise a single State power because the State has separated itself from all of the powers which a Senator could exercise, because those powers are reserved exclusively to the Federal Government, I am insisting that in a broad sense, and not from a technical standpoint at all, a Senator of the United States can not be a State officer. Whatever he is, he can not be a State officer.

Mr. NEELY. Mr. President, will the Senator from Mississippi yield to me to ask a question of the Senator from Georgia?

Mr. STEPHENS. I yield.

Mr. NEELY. If a United States Senator is not a State officer, is the Senator willing to say that he is a Federal officer?

Mr. GEORGE. Mr. President, that would, of course, involve some discussion. So far as I am concerned, I think he is a Federal officer but certainly not a State officer. I am merely suggesting this thought to the Senator from Mississippi, because he seemed to be leaving the field of general observation touching the nature and character of the Government itself, and I would like to have him discuss it if he cares to discuss it—that since the States did create a sovereign complete and supreme within its field, since the States delegated to that sovereignty certain powers which excluded the States from any exercise of those powers, how can a Senator of the United States, who must exercise only the delegated powers, be said to be in any sense an officer of the State? In other words, how could a State, through an officer, do what the State itself has made impossible for the State to do; and if the office is to be classified with respect at all to the actual powers exercised by the officer, how can he be said to be a State officer?

Mr. STEPHENS. Mr. President, the Senator from Georgia at first used this language: That in adopting the Constitution and providing for the organization of the National Government the States established a complete sovereignty. I can not agree with that statement. But a little later the Senator said this: That the States established a sovereignty complete in its field. There is a very wide difference between those two statements. There was a complete sovereignty established within certain limitations. Within those limitations the sovereignty of the United States Government, of course, is supreme, it is complete. The States have no power in that field. But following up the Senator's suggestion that a Senator can not longer be considered a State officer because of the establishment of the Federal Government, the adoption of the Constitution, and the fact that a Senator is sent out from the State to labor in this particular field, I do not agree.

Mr. President, it was said on yesterday, and the same suggestion is carried in the language of the Senator from Georgia this morning, that a United States Senator performs no function for the State government.

Mr. GEORGE. The Senator misapprehended me. I said that he exercised no power reserved to the States.

Mr. STEPHENS. All right. What I had particularly in mind was the language used on yesterday by the Senator from West Virginia, quoting from a speech made by Senator Sutherland in the Glass case, where this language is used:

> He discharges no State function.

It occurred to me, from the language used by the Senator from Georgia, that he entertained the same idea. But the question in my mind was just this: Does he perform no function for a State?

All of us are familiar with the proceedings of the Constitutional Convention. We are acquainted with the debates and the writings that followed immediately after the adjournment of that convention, and the discussion for and against the adoption of the Constitution. We know the purposes which inspired many of those debates. We know how greatly interested the States were in that matter, how jealous they were of their rights, how anxious they were to have those rights preserved, how careful they were to see that certain rights were not taken from them; and in order to protect them in those rights it was finally agreed that the Federal Union should be formed and that the Constitution should be adopted, with this provision in it, that the States shall be represented by two persons in the Senate. All that discussion was useless, it was wasted on the air, it was a loss of time. If the States turned over to the Federal Government all their rights and all their powers and all their sovereignty, what use is there in saying that two persons shall come to represent a State unless there is a possibility—aye, I go further than that; unless it is a fact—that the man coming from North Dakota, from Georgia, from Mississippi, as a Senator from that particular State, shall perform some function for the State, shall be able to protect the interests of the State, if the time shall arrive when the interests of the State shall need protection.

Mr. GEORGE. I hope the Senator from Mississippi does not understand that I took any position contrary to that. I stand with him on that, of course.

Mr. STEPHENS. Then, as I understand the Senator, he agrees that a United States Senator does perform some function for his State?

Mr. GEORGE. I agree that the Federal Government itself was created to serve the interests of all the States, and therefore of every State; but what I have asked the Senator to discuss is this, that this was a Government of limited powers, expressly defined, precisely limited; that the States had reserved to themselves all other powers not granted to the General Government; that a Senator of the United States is forbidden to exercise a single power reserved by the States to themselves and can exercise only the powers which the States have voluntarily delegated to the Federal Government. Therefore, with respect to every power exercised by a Senator, he is not, at least, a State officer; that is all.

Mr. STEPHENS. Of course, Mr. President, we are all familiar with the fact that we have a dual form of government here—the National Government and the State governments—and it is very true that this National Government is a government of delegated powers. Every State in the Union is interested in the General Government, is interested in seeing that those delegated powers are carried out, that the rights delegated are exercised. But we must not forget that although we have a great National Government, there is back yonder a State which is a part of this National Government, a State which has an interest in the National Government, a State which is necessary to the National Government, and that without the action of the aggregation of States there can be no Federal Government, there can be no Senate of the United States. My proposition is this, that although there is a Federal Government, there are States which have an interest in the Government, which go to make up the National Government; that those States have rights as well as interests in that National Government, and that under the Constitution of the United States it was provided that each State should have two Representatives in this body. There was no delegation of power to the Federal Government to select Senators. The selection of a Senator is one of the powers specifically reserved to the States, in the Constitution of the United States.

Mr. REED of Missouri. Mr. President——

The VICE PRESIDENT. Does the Senator from Mississippi yield to the Senator from Missouri?

Mr. STEPHENS. I yield.

Mr. REED of Missouri. If the Senator has concluded that thought in his discussion—and I do not want to draw him away from it—I would like to ask two or three questions for my own information.

Mr. STEPHENS. Very well.

Mr. REED of Missouri. I am asking them of the Senator because he is a member of the Committee on Privileges and Elections. Is any claim made that the action of the Governor of North Dakota in making this appointment is tainted with any kind of fraud, or that there has been any imposition upon the people of North Dakota?

Mr. STEPHENS. In answer to that I will say that I have never heard even the slightest suggestion that there was any fraud in regard to the appointment of Mr. NYE, or in regard to any action of the Governor of North Dakota.

Mr. REED of Missouri. Has there been any protest from North Dakota of any importance?

Mr. STEPHENS. So far as I am advised, there was none. I think, I may say, that I attended every meeting of the committee where this matter was considered, except on one occasion, when an argument was to be presented by some gentleman who was protesting, I was called away and did not hear that argument; but the Senator from Georgia was present at all the meetings, and he can answer the question of the Senator better than I can.

Mr. GEORGE. If I may be permitted, I will say, in answer to the Senator from Missouri, that there was no evidence taken before the committee, but there was a protest made by Congressman BURTNESS—I do not know just on behalf of what body or organization, but on behalf of the protestants in the State of North Dakota. However, there was no evidence taken and no question of fact raised. It was conceded that the whole question was purely legal or a question of proper construction of the Constitution and of the laws of North Dakota.

Mr. REED of Missouri. The protest simply is that the governor did not possess the power?

Mr. GEORGE. Yes; that he did not possess the power.

Mr. REED of Missouri. Is it also true that the governor made the appointment to a time in the early future when an election could be held and he has called that election so that the successor to the present appointee will be chosen at an early date at an election fairly and properly called?

Mr. STEPHENS. I will say in answer to the Senator from Missouri that the Governor of North Dakota has called a special election to fill the vacancy, which election is to be held in June of this year. The Senator, of course, is acquainted with the fact that there is no time fixed in the seventeenth amendment providing for the time of calling an election—in other words, that it shall be within a certain time.

Mr. REED of Missouri. Yes; I understand that. In other words, he has called an election to be held in North Dakota in June which is about as soon as the frost is out of the ground up there and the people can go to the polls.

Mr. STEPHENS. Yes; and there is another reason, I imagine. It is the first state-wide election that will have been held since the death of the late Senator Ladd. We who have been in this body for quite a little while, for a year or more——

Mr. GEORGE. Before the Senator proceeds with his statement will he allow me to make a suggestion right at that point?

The PRESIDING OFFICER (Mr. OVERMAN in the chair). Does the Senator from Mississippi yield to the Senator from Georgia?

Mr. STEPHENS. I yield.

Mr. GEORGE. The fact is that the late Senator Ladd died on June 22, 1925. The further fact is that the election is called, according to the governor's certificate, which is the only evidence upon which we can act, for June 30, 1926, a little more than a year after the death of the late Senator Ladd, and the time therefore necessarily embraces all seasons that they may have in North Dakota.

Mr. REED of Missouri. When was the appointment made which we are now considering?

Mr. GEORGE. On the 14th of November, as I recall it, 1925.

Mr. REED of Missouri. So there was an interval when Congress was not in session, and the office was not filled or attempted to be filled?

Mr. GEORGE. Yes. Another fact is that the late Senator Ladd's term expired on March 4, 1927, and from the date of his death to the end of that term in due course only two sessions of the Congress would intervene, one the long session in which we are now engaged and the other a short session of approximately 90 days. The governor's appointee would hold during the entire long session that the late Senator Ladd had yet to serve.

Mr. REED of Missouri. Mr. President, I simply wanted to ask three questions, and they are being answered——

Mr. STEPHENS. Let me answer one question at a time, if I may.

Mr. REED of Missouri. Certainly; I am speaking by the Senator's indulgence, anyway.

Mr. STEPHENS. With reference to what the Senator from Georgia has said, I was about to say a moment ago that those of us who are acquainted with conditions in that section of the country, as they have been detailed from time to time by Senators from the great Northwest, do not need to be reminded of those conditions. I shall not enter upon the reasons for it, but that section of the country has been made bankrupt, pauperized, the people have been suffering, and there has been financial wreck and ruin in several of those great States out there. The Governor of North Dakota, knowing the condition of his people, doubtless knowing, too, that the expense of the special election would amount to about $200,000 and that that would have to come out of the pockets of the taxpayers of his State, simply waited and did not call a special election and put this great additional burden upon his people. He waited, and when he had determined the matter, he provided for an election of United States Senator to be held the very first time a general election was to be held in his State, when the expense would be practically nothing, if anything at all. I think that the Governor of North Dakota acted with great wisdom in the matter.

Mr. REED of Missouri. Is there a general election to be held in June?

Mr. STEPHENS. Yes.

Mr. NORRIS. It is the primary.

Mr. REED of Missouri. I simply want to ask two or three questions to get at a point in which I am interested, and I will be very brief about it if the Senator will permit me.

Mr. STEPHENS. Certainly.

Mr. REED of Missouri. As I understand, this is the sequence of events: The late Senator Ladd died. Congress was not in session, and the governor did not fill the vacancy or attempt to fill it until about the time Congress was to convene. There was a general election coming on in the month of June, 1926, and in order that the State might be represented in the present session of Congress the governor attempted to make the appointment we are now considering. He issued a commission to Mr. NYE, and Mr. NYE is here presenting that commission. Nobody claims that the governor has perpetrated any fraud. Nobody claims that this is an attempt to misrepresent the State of North Dakota. Nobody claims there is any trick involved in it. The sole question is whether technically the governor had this authority. That is the sole question, is it not?

Mr. STEPHENS. Yes; that is the question involved here.

Mr. REED of Missouri. It seems to me, as nobody is complaining, as there is no trick, as there is no fraud, that a technicality would have to be a very substantial one to bar a State from representation.

Mr. STEPHENS. I agree most heartily with the Senator in that expression.

Mr. President, I was about to refer to the Burton case. I am not going to enlarge upon that case nor upon the Germaine case, nor the Mouat case, all cases decided by the Supreme Court of the United States and all involving the proposition as to whether a United States Senator is a Federal officer. I am going to content myself simply with saying that my judgment is, from a careful reading of those three cases, that the Supreme Court of the United States has held that a United States Senator is not a Federal officer. I notice in the report filed by the able Senator form Montana [Mr. WALSH] in the Glass case that he quoted from the Yarbrough case found in One hundred and tenth United States. From the language of Mr. Justice Miller, referring to a United States Senator, he quoted this language:

> The office, if it be an office—

The Supreme Court there threw doubt upon the matter by saying—

> If it be an office—

discussing the matter with relation to whether he was an officer of the United States. I find, too, that the Senator from Montana in his own language, discussing the proposition as to whether a Senator was a State officer or a Federal officer, recognized the proposition that I advanced early in my remarks, that for certain reasons and for certain purposes and under certain circumstances a United States Senator might be regarded as a Federal officer, but under other circumstances he would not be regarded as a Federal officer.

He referred to a Kentucky case where it was held that Members of the House of Representatives were not State officers, and then the Senator from Montana used this language:

> Under some other circumstances they might have held differently; that is, the words "State officers" may be given one significance in one statute and may be given a broader or narrower significance in another, depending upon what was in the mind of the legislature.

So I say that the Senator means by that language to agree with me that under certain circumstances a man might be properly classed as a Federal officer and under certain other circumstances, although he was the same man holding the same position and laboring in the same field, that he was not a Federal officer. My contention is that for the purpose of election, for the purpose of coming here and representing the interests of the State, he is a State officer.

On yesterday it was suggested, I believe by the Senator from Alabama [Mr. HEFLIN], that in the State of Kentucky the supreme court of that State had held time and again that presidential electors are State officers. They are referred to in the Constitution of the United States, they are provided for by the laws of the National Government, and yet in four or five cases the Supreme Court of Kentucky has held that they were to be regarded as State officers.

Mr. SWANSON. And all their authority for action is derived from the Federal Constitution?

Mr. STEPHENS. That is true.

Mr. SWANSON. Let me ask the Senator further this question: As I understand, his contention is that when the States adopted the Federal Constitution they reserved to themselves as States, as separate entities, the right to send two representatives to the United States Senate.

Mr. STEPHENS. Yes; that is the contention that I have been trying to present.

Mr. SWANSON. That that power was reserved to the States and the Constitution also gives them that power?

Mr. STEPHENS. Yes, sir.

Mr. SWANSON. And that consequently, so far as their qualifications and election are concerned, Senators are elected by State authority, which is not derived from the Federal Government. Therefore when Senators present themselves here they present themselves as representatives of the States or as State officers.

Mr. STEPHENS. That is very true.

Mr. SWANSON. If that contention be true, then there is not justification for refusing Mr. NYE his seat in the Senate?

Mr. STEPHENS. There is none whatever.

Mr. SWANSON. Everybody concedes that.

Mr. STEPHENS. That is true, so far as I know.

Mr. GEORGE. No, Mr. President; we do not concede that at all. Even if Mr. NYE were a State officer, the contention of the majority of the committee is that he is not entitled to his seat; that the Governor of North Dakota was not empowered to make the appointment.

Mr. STEPHENS. That is another legal point which is involved, and which I intend to discuss.

Mr. GEORGE. I did not desire that there should be any misapprehension or misunderstanding about the matter.

Mr. STEPHENS. I was answering a little broadly, but I was answering only for myself.

Reference has been made to the language of the Constitution providing for a Senate. The language of the original Constitution was that—

> The Senate of the United States shall be composed of two Senators from each State.

The seventeenth amendment begins with the same language:

> The Senate of the United States shall be composed of two Senators from each State.

But the seventeenth amendment uses other language with reference to the office of United States Senator; it goes just a little bit further. It describes the man; it designates him; it classifies him.

The Constitution did not say that Senators shall be representatives of the States. The language used is, "two Senators from the State." However, it has been recognized at all times that they were representatives of the States. The seventeenth amendment goes a little further, and, as I have stated, it classifies, designates, and makes the matter plainer. It provides:

> When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies.

Mark the language—

> When vacancies happen in the representation of any State.

Mr. SWANSON. The Constitution does not say a vacancy in the office of Senator.

Mr. STEPHENS. No; but "in the representation of any State," thereby pointing out the fact that a United States Senator is recognized to be not a Federal officer but a representative of a sovereign State.

Mr. GOFF rose.

Mr. STEPHENS. I see that the Senator from West Virgina [Mr. GOFF] desires to ask a question, and I yield at this moment.

Mr. GOFF. Mr. President, I understood the Senator from Mississippi to say in answer to a question propounded by the Senator from Virginia [Mr. SWANSON] that when the States adopted the Constitution they reserved unto themselves certain inherent rights that the Senator now relies upon to justify the Governor of North Dakota in making this appointment. I wish to ask the Senator from Mississippi if it is his contention that when the States adopted the Constitution in 1789 they rereserved to themselves the power that they had expressed delegated to the Federal Government?

Mr. STEPHENS. Of course not. They did not take back any power which they had given the Federal Government. But the States did not delegate to the Federal Government the right to appoint, select, or elect a Senator. The language of the Constitution shows that that power remained in the States.

Mr. GOFF. Was not that the question of the Senator from Virginia?

Mr. STEPHENS. I did not so understand his question. And they did not surrender any powers reserved when the Constitution was adopted.

Mr. GOFF. I may have misunderstood, then, the legal or constitutional import of the question of the Senator from Virginia; but, as I understood the question which he propounded to the Senator from Mississippi, it involved the very proposition which I have now brought to the Senator's attention.

Mr. SWANSON. Mr. President, will the Senator yield to me again?

The PRESIDING OFFICER. Does the Senator from Mississippi yield to the Senator from Virginia?

Mr. STEPHENS. I yield.

Mr. SWANSON. The contention of the Senator from Mississippi, as I understand it, is that the States reserved to themselves, when they adopted the Federal Constitution, the right—they did not get it from the Federal Government, but reserved the right—as independent States, to send two Members to this body, elected by their authority. That was reserved under the Constitution to them, and the Senator from Mississippi insists that when two Members are sent here by the States they are sent here as representatives of the States, and consequently are State officers? I understand that to be his contention?

Mr. STEPHENS. That is my contention exactly.

Mr. GOFF. Mr. President——

The PRESIDING OFFICER. Does the Senator from Mississippi yield further to the Senator from West Virginia?

Mr. STEPHENS. I yield.

Mr. GOFF. On page 1616 of the RECORD of yesterday—and I make reference to it in order that the Senator from Mississippi may have before him the Constitution and its provisions—I stated there the provisions of the old Constitution, as I termed it, and the new Constitution, meaning the old Constitution as modified by the seventeenth amendment, being the constitutional provisions before the Senate in this issue. I quoted the provision that—

> The Senate of the United States shall be composed of two Senators from each State.

When that provision, which is the old Constitution, appeared in the Constitution as adopted in 1789, it appeared as the direct result of delegated powers from the people of the then States of the Union.

The next provision is—

> elected by the people thereof for six years.

That is the new Constitution.

My contention, Mr. President, yesterday and to-day, as reflected in the questions the Senator from Mississippi has so graciously allowed me to ask, is simply that this constitutional provision is in no sense the outgrowth of any reservation; it is the direct outcome of expressly delegated powers. Those powers were delegated to the Federal Government when the Constitution was adopted, and the fact that they were so delegated was ratified and approved when the States of this Union adopted the Constitution of the United States in 1789. The fact that the Constitution was adopted by the States is in no respect inconsistent with the fact that there was originally a delegation of power which placed it beyond any possible reservation by the States when they adopted the Constitution, which was composed of the powers delegated by the people of the several States.

Mr. STEPHENS. If I caught the Senator correctly in what he had to say, he was talking about the delegation of power by the States to the Federal Government. To what particular power does he have reference? I imagine the power to organize a Senate.

Mr. GOFF. I would say legislative power in the broadest sense of the term.

Mr. STEPHENS. Very well. But we are discussing here the organization of a legislative body, and in this particular instance under this particular provision of the Constitution we are discussing one branch of that legislative body, to wit, the Senate of the United States. What power is granted by the States to the Federal Government in this regard? Nothing more than the right to provide for such a body, such a forum. There can be constituted such a forum, but two from each State shall have the right to come and serve, and act, and perform their functions. That is all that amounts to.

But, as I was saying a moment ago, in the seventeenth amendment Senators were designated as representatives of the States, going back to the proposition that there can not be a United States Senator until the people of the State and the governor of the State have performed certain acts. Therefore, in the circumstances and in view of these facts a United States Senator is a State officer.

Mr. President, I had not intended to address the Senate for more than 30 minutes. I am not going to apologize to the Senate for taking so much time, because all Senators realize that I have been interrupted very frequently. I am glad to yield to interruptions, but I regret that so much

time has been taken. I am going to pass from this proposition and in a very few words state another proposition which is in my mind. It is a proposition which gets back to the point that brought the Senator from Georgia [Mr. GEORGE] to his feet a few moments ago, and has to do with the authority that was granted the governor of the State of North Dakota to make an appointment under the provisions of the particular section of the North Dakota law with reference to filling vacancies.

It is very true the seventeenth amendment provides that—

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies.

I am going to stop right there to say just a word with reference to a proposition that was submitted to the Senator from West Virginia yesterday by, I believe, the Senator from Nebraska [Mr. NORRIS].

I do not agree with the Senator from West Virginia, if I understood him correctly. I wish to say that it is my judgment that under the provisions of the seventeenth amendment the governor has the right without any act of the legislature of his State to issue writs of election. We all know it is a matter of common knowledge, we might say, that we take judicial notice of the fact that there is election machinery in every State; that there are offices to be filled by election, and no special act of the legislature is necessary for the governor to issue writs of election to fill vacancies.

But I proceed with the reading of the seventeenth amendment:

Provided, That the legislature of any State may empower the executive thereof to make temporary appointment until the people fill the vacancies by election as the legislature may direct.

The Senator from West Virginia on yesterday read to this body the statute of North Dakota with reference to filling vacancies. I shall not take the time to read that statute, but it begins with this language:

All vacancies * * * shall be filled by appointment, as follows:

Mr. BAYARD. Mr. President, may I ask the Senator one or two questions at this point?

The PRESIDING OFFICER. Does the Senator from Mississippi yield to the Senator from Delaware?

Mr. STEPHENS. Yes.

Mr. BAYARD. I may anticipate what the Senator from Mississippi has in mind; but does not the Senator admit as a matter of law that under the old form of the Constitution—that is, prior to the adoption of the seventeenth amendment—the only power given to the governor of a State was the power given by the Federal Constitution to fill a vacancy?

Mr. STEPHENS. The provision of the Constitution was, of course, to the effect that when a vacancy occurred the governor might fill it; yes.

Mr. BAYARD. And that was the sole grant of power under which the governor could exercise that function. He had no power under the State constitution or State law. The Senator will admit that?

Mr. STEPHENS. That is the only provision of the Constitution, of course, that refers to the matter—that when a vacancy occurs the governor may fill it by appointment, the appointee to serve until the next meeting of the legislature.

Mr. BAYARD. Let me read the original provision of the Constitution—

and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature—

And so forth.

Mr. STEPHENS. Yes. But that is not a grant of power by the States to the Federal Government. It was, in fact, a reservation of power by the States. The States were the grantors of power; the Federal Government was only a grantee. The powers of that Government are delegated.

Mr. BAYARD. That is the seventeenth amendment, and that was the sole source of power that the governor of a State had to fill any vacancy. He derived no power whatever, nor could he derive any power whatever, from any action of the State legislature up to the adoption of the seventeenth amendment. Is that right?

Mr. STEPHENS. No; the legislature, of course, up to that time, had nothing to do with the matter, if we look only to the language of the Constitution.

Mr. BAYARD. It not only had nothing to do with it, but he had no power to make an appointment.

Mr. STEPHENS. Certainly not, in the sense that I have suggested.

Mr. BAYARD. In other words, his sole power grew out of the Federal Constitution.

Mr. STEPHENS. I will grant that. I want to say, however, while I grant it, that there is rather strong authority—and I think perhaps it will be argued here by another Senator—that does not agree with the contention of the Senator from Delaware; that the inherent powers that reside in the States, that were reserved to the States, and the special reservation made in the Constitution that no State should under any conditions, except of its own will, be deprived of representation in this body, gave the governor of the State authority. I am not arguing that now, however.

Mr. BAYARD. But does the Senator from Mississippi, who is now arguing on behalf of the seating of Mr. NYE, deny that the Constitution prior to the adoption of the seventeenth amendment was the sole source of power in the governor to fill a vacancy?

Mr. STEPHENS. I have quoted, as the Senator has, the language of the Constitution in its original provisions, that vacancies shall be filled by the governor.

Mr. BAYARD. Let me go further than that. Let me read to the Senator the words of the State statute of North Dakota, which was in effect at the time and prior to the time of the passage of the seventeenth amendment touching on this question, the particular section of it which is now relied upon—section 4 of the present act, which was section 1, I believe, of the act preceding it.

Mr. STEPHENS. Yes, sir.

Mr. BAYARD (reading)—

In State and district offices by the governor.

That is, granting him the power.

Mr. STEPHENS. Yes.

Mr. BAYARD. Now, then, if that be true, so far as the governor was concerned, and so far as his power to fill a vacancy in the office of United States Senator was concerned, that act of the North Dakota Legislature was a mere brutum fulmen. Is that right?

Mr. STEPHENS. I will let the Senator place his own construction on the matter. I will place mine on it when I come to answer the general proposition.

Mr. BAYARD. Then I have anticipated the Senator's argument?

Mr. STEPHENS. Somewhat; yes.

Mr. BAYARD. Will the Senator make no reply at this time to that suggestion of mine?

Mr. STEPHENS. I will answer it in a moment; yes, sir.

Mr. BAYARD. Let me go further and develop my whole thought, if I may, at this time. The Senator can take it up later.

Mr. STEPHENS. Very well; I shall be glad to have the Senator do so.

Mr. BAYARD. That being so, assuming that the Senator agrees with me, the legal situation was that at the time of the adoption of the seventeenth amendment there happened to be upon the statutes of North Dakota a provision allowing and empowering the governor to fill certain offices, including State offices. There is no question about that in our minds, I think.

Mr. STEPHENS. Quite true.

Mr. BAYARD. So that, if the contention of the Senator from Mississippi is true, immediately upon the passage of the seventeenth amendment this statute of the State of North Dakota, which was absolutely inoperative up to the time of the passage of the seventeenth amendment to the Federal Constitution, suddenly and by its own virtue was called into being and effect.

Mr. STEPHENS. That is not my contention.

Mr. BAYARD. I am glad it is not. The Senator is coming my way. I am glad of that.

Mr. STEPHENS. I do not think we agree at all on the main propositions; but I do agree that the statute of the State, enacted before the adoption of the seventeenth amendment, gave the governor power to appoint or had any reference to a United States Senator. But four years after the adoption of that amendment to the Constitution the Legislature of North Dakota amended and reenacted the statute to which the Senator refers. It is under that statute that I contend the governor had authority to fill the vacancy.

Mr. BAYARD. Going a little further and anticipating what the Senator manifestly is going to say before he closes, assuming that my argument is sound as far as I have gone, let me call attention of the Senator to the title of the act as reenacted, or to a portion of the act as reenacted after the adoption of the seventeenth amendment. This is part of the act itself. It is in quotations:

An act amending and reenacting section 696 of the Compiled Laws of North Dakota for 1913 relating to filling vacancies.

Then section 4 of this act of 1917 reenacts in ipsissimis verbis section 1 of the preceding act. I submit to the Senator that a statute which, in contemplation of the legal situation, was void and impotent and of no effect before the passage of the seventeenth amendment, can not be made valid or potent by any mere reenactment after the passage of that amendment, if it is done in those same words.

I merely invite the Senator's attention to those thoughts.

Mr. STEPHENS. I thank the Senator. I was about to approach that particular subject when he interrupted me.

I will say, in answer to the questions propounded to me, that I do not contend that prior to 1917 the act of the Legislature of North Dakota with reference to the power of the governor to fill vacancies in State and district offices was broad enough to extend to a United States Senator. I do not think so. At the time this particular legislation was enacted, the Legislature of the State of North Dakota in a general sense, at least, had no authority to empower the governor of the State to fill a vacancy in the Senate. That power was given him by the Constitution.

It is very evident to my mind that when this particular legislation was enacted, years before the adoption of the seventeenth amendment, the Legislature of the State of North Dakota did not have in contemplation giving the governor of the State authority to appoint a United States Senator. That question was discussed at some length in the Glass case, the Alabama case. In that particular case the Governor of Alabama made the appointment, as he claimed, under authority given by the statute of 1909, a statute enacted four years prior to the adoption of the seventeenth amendment. The Senate reached the conclusion, although the majority was only one, that the act was not prospective in its effect; that it did not reach out and meet and cover a condition that arose subsequently.

Here, however, we have an entirely different proposition. The Alabama act was passed four years prior to the adoption of the seventeenth amendment. The North Dakota act was passed—or, to use the exact language, reenacted—in 1917, four years after the adoption of the seventeenth amendment. There is that difference, to say the least, between the Alabama case and the North Dakota case; and that difference is strongly in favor of the North Dakota case.

Mr. NEELY. Mr. President——

The PRESIDING OFFICER. Does the Senator from Mississippi yield to the Senator from West Virginia?

Mr. STEPHENS. I yield; yes.

Mr. NEELY. I have just entered the Chamber. Has the fact also been brought out that the Glass case was decided by a margin of a single vote, 61 votes having been cast, and the precedent, if there be a precedent, established by a margin of only one?

Mr. STEPHENS. One vote; yes. That is correct.

Mr. BAYARD. Mr. President——

The PRESIDING OFFICER. Does the Senator from Mississippi further yield to the Senator from Delaware?

Mr. STEPHENS. I yield again; yes.

Mr. BAYARD. Is it the Senator's present contention that the reenactment of the North Dakota statute of 1917 is a definite recognition of the existence of the seventeenth amendment to the Federal Constitution, and so definite as to bring the Nye case within the purview of the power of appointment given to the governor?

Mr. STEPHENS. The Senator is anticipating my argument just a little.

Mr. BAYARD. I do not mean to do that unduly.

Mr. STEPHENS. Of course there can be no controversy over the fact that this North Dakota statute does not refer explicitly, in terms, to a United States Senator; but my contention is that that is not required. If a United States Senator be a State officer, it is not necessary for the legislature of any State, in order to come within the terms of this provision of the seventeenth amendment, to refer in terms to the United States Senate or to a United States Senator. I have tried to argue all along that a Senator, although called a United States Senator, is really a State officer; and if I be correct in that contention I think I am also correct in the statement that it is not required that reference be made to a United States Senator directly, or at all, in order to authorize the governor of the State to appoint under given circumstances.

Mr. GOFF. Mr. President——

The PRESIDING OFFICER. Does the Senator from Mississippi yield to the Senator from West Virginia?

Mr. STEPHENS. I yield.

Mr. GOFF. Am I correct in understanding the Senator to say that the power and authority of the Governor of North Dakota to make this appointment, under the act of March 17, 1917, is based upon the fact that a United States Senator is a State officer?

Mr. STEPHENS. Some hold to a little different view from mine, and find grant of power and right to act coming from another source, but because of the fact that a United States Senator is a State officer, and because of the fact that the Constitution of the United States, in the seventeenth amendment, provides that in a certain event he may have power, and because of the further fact that the legislature, after the adoption of the seventeenth amendment, did take such action as I believe gave him full authority to act, I contend that the governor did have the authority to fill this vacancy by appointment as he has done.

Mr. GOFF. But if the Senator, speaking for himself and not for anyone else, should agree that a United States Senator is not a State officer, then he would consider that the governor had no power or authority to appoint him under the act of March 15, 1917, would he not?

Mr. STEPHENS. Mr. President, I stated in the beginning that there were several very interesting legal propositions involved in this matter, and I called attention to the fact that under the provisions of section 78 of the constitution of North Dakota the governor was authorized to fill all vacancies.

I made reference also to the history of the constitutional convention, the discussions relating to the adoption and ratification of the Constitution, the fact that one thing was firmly established—that is, that at all times the State had a right to have two representatives in this body, and that there was no power under the sun that could take that right away from it——

Mr. GOFF. The State could take it away itself, could it not?

Mr. STEPHENS. Except the State itself. I said, taking into consideration all those facts, there might be made a very strong argument to the effect that, regardless of the provisions of this law, regardless of whether a United States Senator should be considered a State officer or not, even then the Governor of North Dakota would have authority to make the appointment. I did not say that I went that far, but I said there was good authority for an argument to that effect, and that a strong argument along that line might well be made upon the subject.

Mr. GOFF. The Senator, of course, knows that I do not want to unnecessarily interrupt him, but let me ask him this question, and then I will cease: If the Senator eliminates from the discussion the status of a United States Senator, then the Senator would rely upon the inherent power of the State in its sovereign capacity to appoint a United States Senator?

Mr. STEPHENS. I do not see how we are going to eliminate the status of a United States Senator from this particular proposition.

Mr. GOFF. If the Senator assumes that a United States Senator is not a State officer, that he is a Federal officer, that would eliminate it. Of course, he must be either one of the two.

Mr. STEPHENS. He might very well be called a Federal officer in a certain sense, and yet in another sense, and in a very strong sense, be a State officer. But there are several decisions of the Supreme Court of the United States that hold that a Senator is not an officer of the United States.

Mr. GOFF. If the Senator for the purposes of his argument should eliminate from it the status of a Senator as being a State officer, would he not be reduced to adopt the inherent power of the State as the source of the governor's power to appoint?

Mr. STEPHENS. As I stated a moment ago, there is strong authority—and I imagine it is going to be presented in the Senate—to the effect that under all the circumstances, conditions, and provisions the reserved powers and rights, and so on, there is an inherent power in the State through its properly constituted authority, to wit, the governor, to make provision under certain circumstances for membership in this body.

Mr. GOFF. I understand the Senator's position, and I thank him for his answer.

Mr. STEPHENS. Now, Mr. President, getting back to this statute of North Dakota, it reads:

All vacancies, except in the office of a member of the legislative assembly, shall be filled by appointment as follows:

Then there are four subdivisions, making provision for appointment to fill vacancies by certain authorities and under certain conditions. We are not interested in any except the last, and I will read that in conjunction with the beginning of this statute:

All vacancies in State and district offices shall be filled by the governor.

Mr. KENDRICK. Mr. President——

The PRESIDING OFFICER. Does the Senator from Mississippi yield to the Senator from Wyoming?

Mr. STEPHENS. I yield.

Mr. KENDRICK. I want to ask the Senator if at the time the measure was acted upon by the legislature an official record was made of the discussion of the measure; that is, of the enactment or reenactment of this provision authorizing the governor to make appointments? My idea is to determine whether the legislature took account of the possible appointment of a Senator and whether there was discussion for or against authorizing the governor to make such an appointment.

Mr. STEPHENS. As the Senator knows, as a general proposition to say the least, the debates in a State legislature are not taken down by reporters, as they are here, and I presume there was no record made of what was said on this subject in the Legislature of North Dakota. So far as I know, to be frank, there was no discussion. I do not state that as a fact, but I do not know of the matter having been referred to even indirectly. But I do not think that is controlling as to whether there was or not.

Mr. KENDRICK. It is clearly the Senator's opinion that, whether or not authority was conferred, the legislature intended to confer the authority by this act?

Mr. STEPHENS. I think so; yes; and I will give a reason for saying that. On yesterday some reference was made to the legal proposition that every man is presumed to know the law, an old legal maxim. This was the situation that confronted the Legislature of North Dakota in 1917.

The seventeenth amendment to the Constitution of the United States had been adopted four years prior to that time. I do not think it requires any stretch of the imagination to believe that every member of that legislature knew of the adoption of the seventeenth amendment; to say the least, there is a legal presumption that the members knew of the adoption of the amendment.

Mr. KENDRICK. Mr. President——

The PRESIDING OFFICER. Does the Senator yield further to the Senator from Wyoming?

Mr. STEPHENS. I yield.

Mr. KENDRICK. Is it not reasonably safe to assume that if a legislature had had any doubt upon that point there would have been some discussion of the question and that there would have been at least a partial record of the discussion?

Mr. STEPHENS. I imagine that if the matter had occurred to them there would have been such a discussion that it would have attracted the attention of somebody, and the matter would have been brought here before the committee to that effect; although that is of course speculation on my part.

Mr. KENDRICK. Is it not reasonable to believe that if there had been objection to the granting of this authority to the governor the title of Senator would have been referred to and excluded specifically or exempted from the list of appointments?

Mr. STEPHENS. I think so.

Mr. GEORGE. Mr. President, will the Senator yield?

Mr. STEPHENS. In just a moment. This provision makes only one exception, and that is in regard to the office of a member of the legislative assembly. That is due to the fact, as I understand it, that there is a constitutional provision in North Dakota which prohibits the legislature from providing that the governor shall have authority to appoint someone to fill a vacancy in the legislative assembly of the State. That is the only exception that was made.

I now yield to the Senator from Georgia.

Mr. GEORGE. I wanted to make just this inquiry at this point, in the nature of an observation, and I hope in furtherance of a real desire to get the truth of this case. The question asked of the Senator from Mississippi would presuppose that the legislature intended to give to the governor the power to make an appointment. I want to call attention to the fact that the legislaure is not required to give the governor the power under the seventeenth amendment. The legislature is merely authorized to give the governor the power, and five States have expressly refused to give the governor that power.

Mr. ROBINSON of Arkansas. Mr. President, will the Senator from Mississippi yield to me to ask a question of the Senator from Georgia?

Mr. STEPHENS. I yield to the Senator.

Mr. ROBINSON of Arkansas. The statement has been repeatedly made in the Senate, and I have also read it in the press, that the act of 1917, which I understand the Senator from Mississippi is now discussing and which it is claimed by some Senators gives the Governor of North Dakota the power to make a temporary appointment pending an election, was merely a reenactment of an old statute.

Mr. GEORGE. A reenactment, except as to the office of State's attorney.

Mr. ROBINSON of Arkansas. What was the object of reenacting the old statute?

Mr. GEORGE. To amend it so as to give the governor, who had also the power to remove a State's attorney, the power to advise and consent to his appointment by a board of county commissioners. But the point I was making—and it is not either in the interest of Mr. NYE or against Mr. NYE—is that the mere failure of the legislature to name the office of Senator by title, or to exclude that office, would not indicate that it intended to deal with the question at all, or was considering the question at all, because the legislature had the option of giving the governor this power or withholding the power from the governor.

Mr. ROBINSON of Arkansas. Mr. President, as I understand, the correct rule of interpretation respecting the intention of a legislature is to be arrived at from the language the legislature employs.

Mr. GEORGE. Entirely so.

Mr. STEPHENS. Now, Mr. President, I want to hurry along, and I shall take up right now the proposition advanced by the Senator from Georgia [Mr. GEORGE].

Mr. COPELAND. Mr. President, will the Senator yield?

Mr. STEPHENS. I yield.

Mr. COPELAND. I think it is hardly fair to let this question of the Senator from Arkansas pass by without a little fuller answer.

Mr. STEPHENS. I expect to get to that in a moment.

Mr. COPELAND. Very well, if the Senator is going to answer it. Of course I think there is an answer.

Mr. STEPHENS. If I do not happen to strike the answer the Senator from New York has in his mind, I would be very happy to have him rise and make his suggestion.

Mr. COPELAND. I thank the Senator.

Mr. STEPHENS. What I was going to say was just this: The Senator from Georgia suggests that the seventeenth amendment does not require that the legislature of a State grant authority to the governor to fill a vacancy by a temporary appointment; that it simply grants the power to the legislature. That is very true. But in considering the proposition as to whether the legislature had this in mind, whether they were likely to take affirmative action on this matter, whether they were likely to accept the grant of the power to exercise the right to give the governor authority in this kind of a case, we might very well for a moment look at the history of the State of North Dakota with reference to this particular matter of filling vacancies.

From the earliest time that there has been a State known as North Dakota it has been the policy of that State to permit, really to require, that all vacancies be filled by appointment. Going back to the constitution adopted when statehood was granted, we find that a provision is therein contained to the effect that all vacancies shall be filled by appointment. It will take only a moment to quote the language:

SEC. 78. When any office from any cause shall become vacant, and no mode is provided by the constitution or law for filling such vacancy, the governor shall have power to fill such vacancy by appointment.

I maintain that it was written in the constitution that the governor should fill all vacancies by appointment unless specific provision had been made in the constitution or in the law for the filling of the vacancy in some other way.

Mr. ROBINSON of Arkansas. That language is just as broad as it could be made.

Mr. STEPHENS. Certainly it is.

Mr. ROBINSON of Arkansas. If the legislature had desired to anticipate any possible vacancy and yet employ language that would authorize the governor to fill it, it would not have used different language than that which was actually used.

Mr. STEPHENS. That is very true. Now, following up that thought, the legislative history of the State shows that at all times provision has been made by enactments for the filling of vacancies, so I may safely say that it was the policy of the State of North Dakota to fill vacancies by appointment.

Mr. BAYARD. Mr. President——

The PRESIDING OFFICER. Does the Senator from Mississippi yield to the Senator from Delaware?

Mr. STEPHENS. I yield.

Mr. BAYARD. The Senator does not contend that it conferred any power or thought of power upon the governor to fill a vacancy in the office of United States Senator, does he?

Mr. STEPHENS. I am not discussing that particular question at this time.

Mr. BAYARD. But I am asking the question of the Senator.

Mr. STEPHENS. That is about what the Senator asked some moments ago, and what the Senator from West Virginia asked, and I made answer then, and I shall not repeat it except to make brief reference to the fact that there is very respectable authority to the effect that this was a grant of power when taking into consideration the history of the formation of our Government, the Constitution, and the reservation of certain rights. I am not going to enter into any discussion of the matter further at this moment.

I come back to the proposition that it has been the policy of the State of North Dakota to fill vacancies by appointment. On yesterday the Senator from Pennsylvania [Mr. PEPPER] asked the Senator from West Virginia [Mr. GOFF] a question as to whether it was not reasonable to suppose that because the legislature made no reference to the office of United States Senator that they did not intend to give the governor power to appoint. I think the Senator from West Virginia agreed with him. I do not.

Mr. WILLIAMS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Mississippi yield to the Senator from Missouri?

Mr. STEPHENS. I yield.

Mr. WILLIAMS. My understanding of the statement of the Senator from West Virginia, who is out of the Chamber just at this moment, was that there was some implication that arose from the fact that the legislative offices in the State of North Dakota were precluded from appointment by the governor of that State, and he thought some strength could be gained from the position taken by the Senator from West Virginia because of that fact that the governor had no power to appoint legislative officers and had the power only to appoint administrative officers.

Mr. STEPHENS. I do not think that adds any strength to the proposition——

Mr. WILLIAMS. It may not.

Mr. STEPHENS. Because before the seventeenth amendment was adopted, even before the grant of statehood of North Dakota, there had been a provision in the Constitution of the United States that in certain circumstances, when a vacancy occurred at least, that a governor might appoint. As a matter of fact, it is a matter of history that before the adoption of the seventeenth amendment to the Constitution of the United States the Governor of North Dakota had appointed two Members to this body to fill vacancies. I do not think that the legislature would shy off from the proposition of granting the governor of the State power to appoint to fill a vacancy in this body simply because the appointee would be regarded as a legislative officer and the constitution of the State provided that in their own legislative assembly vacancies should be filled by election.

Mr. GEORGE. Mr. President——

The PRESIDING OFFICER. Does the Senator from Mississippi yield to the Senator from Georgia?

Mr. STEPHENS. Certainly.

Mr. GEORGE. I want to ask the Senator if it were not a direct grant of power to the governor in any State under the old Constitution to make a temporary appointment until the next general assembly in that State or the next legislature in that State could meet? Of course, if there happened vacancies in North Dakota under the old Constitution—that is, under the Constitution prior to the ratification of the seventeenth amendment thereto—the governor had direct power from the Federal Constitution itself and his appointments would have been good.

The point I raised a while ago and undertook to make clear was that the mere silence of the legislature in this statute, its mere failure to enumerate the office of United States Senator, could not fairly lead to the inference that they thought they had already included it any more than we could fairly infer that they did not wish to confer upon their governor the power and that they thought they had excluded it, so the argument would get nowhere. That is the only point I wanted to make.

Mr. SMITH. Mr. President, will the Senator yield?

The PRESIDING OFFICER. Does the Senator from Mississippi yield to the Senator from South Carolina?

Mr. STEPHENS. Certainly.

Mr. SMITH. In view of the statement the Senator has just made in reference to history in making those appointments in North Dakota, it seems to me that the analogy between the seventeenth amendment and the old provision of the Constitution about filling those vacancies is not dissimilar, as some of my legal friends would have us believe. Under the old Constitution the power was granted by the very wording of the Constitution itself; that is, the governor had the right to appoint. We simply changed that and made it obligatory upon him to issue writs of election on account of the nature of the procedure of selecting a United States Senator being changed from the legislature to the people. It now makes it mandatory upon him to issue writs of election in lieu of the legislature. But recognizing that circumstances may develop when it would not be convenient to issue those writs, as in this very case, it provided that the legislature might enable him to do as he had done heretofore and fill temporarily the place. Therefore having exercised that power under the old law of filling the vacancy, now under the changed nature of it they simply in my opinion take the view that, whether the legislature acted or whether they did not, he must issue writs of election. The law as it then stood and as it was reenacted enabled him to make the appointment because he must issue writs of election whether the legislature acted or not. Therefore they took the view "we have already acted as to the appointing power. The Constitution demands that you shall call a special election," which he did, and I maintain that every phase of the requirements of the seventeenth amendment has been amply met by the procedure in North Dakota.

Mr. GEORGE. Mr. President——

The PRESIDING OFFICER. Does the Senator from Mississippi yield further to the Senator from Georgia?

Mr. GEORGE. I do not want to trespass upon the Senator's time. I have very great respect and love for him, and I know he has occupied the floor much longer than he expected because of these questions.

Mr. STEPHENS. Yes; very much longer.

Mr. GEORGE. But I would like to make this observation in answer to the Senator from South Carolina, with the permission of the Senator from Mississippi.

Mr. STEPHENS. Pardon me. I understand the Senator is going to speak a little later. Would he be willing to defer his statement until he takes the floor in his own right? I do not care to yield for him to reply to the Senator from South Carolina. If he desires to ask me a question, I shall be glad to yield to him.

Mr. GEORGE. I did not know I was going to speak.

Mr. STEPHENS. I judged so from what the Senator said a moment ago. I regret not to yield to the Senator from Georgia, but I did not intend to occupy more than 30 minutes, and I have been kept here more than two hours by constant interruptions. I regret those interruptions merely because of the time they have taken, not because they worried me but because they perhaps kept others here much longer than they would have otherwise remained.

It is stated that this is simply a reenactment of a statute, and that therefore it could not make a new condition. I want to submit the proposition that if in 1913, when this law was first enacted with reference to filling vacancies, there had been only five State offices and that later on by action of the people of the State, in amending their constitution or by action of the legislature, there was a sixth State office created, in that event if it should be argued that the law itself was not broad enough and could not be expanded to cover the sixth case, still the governor of the State would have the power to fill that particular vacancy, if one should occur in the sixth office, without legislative action because of the provision of the Constitution to which reference has been made. I go further and say that when the statute was reenacted in 1917 it covered by its terms the sixth office, and it covered in its legal effect the sixth office. I am now, in this connection, considering the office of United States Senator as the new, or sixth, office, because of the change in the provisions of the Constitution of the United States with reference to the filling of vacancies by appointment.

This is an effort on the part of the legislature to authorize the filling of vacancies. What vacancies? All vacancies. The language is as broad as can be used. Suppose, as I said a moment ago, that in 1917 there were only five State offices. Of course, at that time it would apply only to the five. But suppose, further, that in 1915 there was a sixth office created. Then in 1917, when the statute was reenacted, by its terms it covered the sixth office.

I ask this question: What different language could have been used? The language is "all vacancies," covering the new office also. In other words, the thing the legislature has in mind, having in view the constitutional provision with reference to vacancies, was the filling of all vacancies and not the filling of a vacancy in a particular office. The subject was general. The language was broad; it was comprehensive; it covered "all vacancies." The subject of legislation was the filling of vacancies.

Mr. SMITH. Mr. President, may I ask the Senator just one question?

Mr. STEPHENS. Yes, sir.

Mr. SMITH. If, as has been contended, the legislators did not under the provisions of the seventeenth amendment intend to grant the governor that power, would it not have been very easy for them to have said "except"?

Mr. STEPHENS. It would have been the easiest thing in the world for them to have done so and the sensible thing to have done. As a matter of fact, considering that the seventeenth amendment authorized the Legislature of North Dakota to provide for making temporary appointments to fill vacancies, the legal presumption is that it was the intention of the legislature to include this particular kind of case if the language is broad enough to include it. As the legislature was authorized to provide for such a contingency, it is presumed that the members of the legislature had knowledge of this authority—the question then being considered being the provision for filling vacancies, and the language used "all vacancies." There was only one exception, and I contend that the legal presumption is that the legislature intended to follow the settled policy of the State and grant the governor authority to appoint in this kind of case.

There have been so many interruptions that I have occupied the floor longer than I had intended; but I want to discuss for a few moments the construction that I think should be given to the North Dakota statute—the 1917 statute—with reference to filling vacancies. It is my contention that this statute gave authority to the governor to appoint Mr. NYE.

If a Senator is a State officer, it is unnecessary that the legislature should have made direct reference to that office when it came to legislate upon the subject of filling vacancies. Provision for filling vacancies could very well be made by the inclusive term "all State offices." Neither the secretary of state, attorney general, supreme court judge, nor any other State officer was referred to by name, yet no one will contend that it was not the intention of the legislature to provide for the filling of a vacancy in any of those offices, nor that the governor under this statute would not have authority to do so.

It is a well-settled principle of law that it is presumed that the legislature is acquainted with the law; that it has a knowledge of the state of it upon which it legislates.

So I say that as the legislature had authority to provide that the governor might make an appointment to fill a vacancy in the representation of the State in the United States Senate this legal principle may be invoked; and it is conclusive on the proposition, if the language used is comprehensive enough to include a United States Senator, without making any reference to that particular office or to the seventeenth amendment.

Having in mind the authority of the legislature under the provisions of the seventeenth amendment to grant the governor the power to fill a vacancy of this character, I invoke another legal principle—the presumption against any intention to surrender public rights.

This is applicable, I think, because of the settled policy of the State with reference to filling vacancies and of the interest of the State in having its full representation in the Senate. It can not be denied that it is to the interest of the State to have such provision for filling vacancies. Otherwise, it might happen, at a time when matters of grave importance were being considered in the Congress, that the State would be entirely without representation.

Again, it is a rule of statutory construction that statutes will be construed in the most beneficial way, which their language will permit, to prevent injustice, to favor public convenience, and oppose all prejudice to public interests.

It has also been held that in the consideration of the provisions of any statute, they ought to receive such construction, if the words and subject matter will admit of it, so that the existing rights of the public be not infringed.

Another rule of statutory construction is that statutes which concern the public good or the general welfare are liberally construed. Too, the settled legislative, constitutional, and political policy may be inquired into in determining what construction should be given to the language.

On the question of liberal construction of statutes, I quote the words of Justice Field in Fourth Sawyer, 302:

> Instances without number exist where the meaning of words in a statute has been enlarged or restricted and qualified to carry out the intention of the legislature.

I have referred to the Sawyer case in order to suggest that if it should be granted that a Senator is not a State officer this would not necessarily decide the matter. In other words, the legislature had the right to give the governor authority to fill such a vacancy temporarily, and if the legislature made an effort to legislate upon the subject, believing that a Senator is a State officer and for that reason included him in the provisions of the statute without direct reference, it would be highly technical and unjust and unfair to the State of North Dakota for the Senate to hold that Mr. NYE should be denied a seat and the State denied representation.

The mere literal construction ought not to prevail if it is opposed to the intention of the legislature. The natural import of words may be greatly varied to give effect to the fundamental purpose of the statute. Courts look at the language of the whole act, and if they find in any particular clause an expression not so large and extensive in its import as those used in other parts of the statute—if upon a view of the whole act they can collect from the larger and more extensive expressions used in the other parts the real intention of the legislature—it is their duty to give effect to the larger expression.

As has been stated, the seventeenth amendment granted authority to the legislature of the State to give the governor power to fill vacancies temporarily; this statute was reenacted after the adoption of that amendment; the manifest and expressed purpose of the statute was to provide for filling vacancies; the language was as broad and comprehensive as could be used—"all vacancies."

Mr. President, I submit that when we apply these principles of law and statutory construction to the condition that existed with reference to the provisions of the United States Constitution, the policy of the State, and the facts of this case, a reasonable conclusion is that the action of the governor was valid and that Mr. NYE should be seated.

In 1919 the Legislature of North Dakota enacted a statute providing for a petition for the recall of officers under certain circumstances. The applicable language is:

> The recall of any elective, congressional, State, county, judicial, or legislative officer.

It is argued that because the terms "congressional" and "State" are used that this indicates that the legislature recognized a distinction between "congressional" and "State" officers; that by this language it was declared that Senators are not State officers. That construction does not necessarily follow. In fact, it is my opinion that it was proposed to give the people the right to recall a Senator and indicates in the clearest and strongest way that he was regarded as a State officer. If not, what right would the people of the State have to recall him?

Of course, this statute was enacted after the statute on the subject of vacancies; but it throws light upon how Senators were regarded in that State. In using the term "congressional," the legislature simply adopted the term that is commonly used in referring to such officers and merely as a matter of designation; but the whole purpose and effect of the act shows plainly that it was in the mind of the legislature that what is generally referred to as a "congressional" office is really a State office.

It is argued, also, that the governor had no right to fill the vacancy, even though a Senator is a State officer and even though the legislature recognized him as such and endeavored to empower the governor to fill a vacancy in that office. This contention is based upon the fact that the seventeenth amendment only gave the legislature authority to authorize the governor to make "temporary" appointments, while the legislative enactment gives him power to "fill vacancies."

There is no merit in this argument. The answer is that a greater includes a lesser. Of course the governor's commission and his right to appoint will have to be considered and construed in the light of the seventeenth amendment; and the time that his appointee can serve will be limited and restricted by the provisions of that amendment.

In support of this contention I refer to two cases. In Scott *v.* Flowers (61 Nebr. 620) the court said:

> The legislature has clearly here expressed its will, but it has gone too far; it has transcended the limits of its authority. It has, in an unmistakable manner, signified its purpose not only to authorize the commitment to the reform school of certain children under 16 years of age, but also children beyond that age, who, although guiltless of crime, have evinced a criminal tendency and are without proper parental restraint. The legislature having declared its will, and its command to the courts being in part valid and in part void, the decisive question is, Shall section 5 be given effect so far as it is in accord and agreement with the paramount law? It seems that both good sense and judicial authority require that the question should receive an affirmative answer.

The other case is Commissioners *v.* George (104 Ky. 260). In this case there appears this language:

> The act construed created a board of penitentiary commissioners, and provided that of the first board one should hold for two years, one for four years, and one for six years, and that their successors should be elected for six years. The constitution forbade the creation of

officers with a longer term than four years. The act was held to create a four-year term and to be valid as so modified.

The language employed shows that the general assembly was willing that one of the commissioners should hold his office for six years—two years longer than the constitution will permit. As the general assembly expressed a willingness that one of the commissioners should hold for two years longer than the constitution permits, it is certainly reasonable to conclude that it was the will of that body that the commissioners should hold for four years, as this term is necessarily included in the longer one which is fixed. To hold the act void in so far as it makes the term six years instead of four, still the balance of the act is complete and enforceable. The purpose and intent of the general assembly that the commissioners should manage and control the penitentiaries can be effectuated by eliminating from the act that part which attempted to make terms six instead of four years.

The holding of these cases is to this effect: That the appointment is not invalidated, but that the time the appointee can hold is limited; that when some one is duly elected, the person who was appointed is no longer entitled to hold the office.

The Governor of North Dakota complied with the letter, the purpose, and spirit of the Constitution when he commissioned Mr. NYE to serve until an election should be held in compliance with a writ of election issued by the governor, as required by the seventeenth amendment.

Membership in this body is not a privilege granted to States, but it is a right—not a privilege granted by the Federal Government in the Constitution to the States, but a right specifically retained by the States in express and positive language. The right of a State to be represented here is a sacred, substantial, and inviolable right. We are not interested in individuals. As I have already quoted from Tucker on constitutional law—"States, not men, are constituents of the Senate." We are not interested in a man by the name of GERALD P. NYE. We are interested, however, in giving to a sovereign State its fullest right to be represented in this great body; a right, as I said a moment ago, which is sacred, substantial, inviolable.

As was suggested by the Senator from Missouri [Mr. REED], there is not even the slightest suspicion of fraud here. Mr. NYE's commission is not tainted. Nobody has had the temerity to come before the committee and say that he comes to this body with a commission obtained by fraud; that there was any corruption in connection with the matter. There is nothing of that kind in it.

Mr. SMITH. Has there been any intimation from the State of North Dakota to that effect?

Mr. STEPHENS. I have heard absolutely nothing which reflected upon the Governor of the State of North Dakota, nor anything that reflected upon Mr. NYE, who presents the governor's commission here. The only contention that has ever been made has been, as was stated by the Senator from Georgia [Mr. GEORGE], that the governor's authority to appoint was questioned; in other words, there is simply a bare, bald legal proposition involved here. I am unwilling, Mr. President, on a bare technicality to say to a sovereign State that it shall be denied representation in this body. According to my judgment, there must be a splitting of hairs, there must be a resting of the case upon a slight technicality, to say that Mr. NYE shall not be allowed to sit in this body.

I take the broad ground that in a matter of this kind if there is any doubt about the proposition the doubt should be resolved in favor of the validity of the action of the governor and of the commission issued to Mr. NYE. If it were a question between NYE and the United States, a different proposition would be involved; he would be simply an individual; but here we have a man presenting himself, coming as a representative from a sovereign State, armed with a commission which was signed by the governor of that State, stating that he shall serve here until a special election shall have been held. It is my honest, sincere judgment as a legal proposition that we should give not NYE but the State of North Dakota the benefit of that doubt, and that we should hold that Mr. NYE is entitled to a seat in this body.

Mr. FRAZIER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. MCNARY in the chair). The Secretary will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

Ashurst	Butler	Deneen	Fletcher
Bayard	Cameron	Dill	Frazier
Blease	Capper	Edge	George
Bratton	Caraway	Edwards	Gerry
Brookhart	Copeland	Ernst	Glass
Broussard	Couzens	Ferris	Goff
Bruce	Curtis	Fess	Gooding
Hale	Lenroot	Pepper	Stanfield
Harreld	McKellar	Pine	Stephens
Harris	McKinley	Reed, Mo.	Swanson
Harrison	McLean	Reed, Pa.	Trammell
Heflin	McMaster	Robinson, Ark.	Tyson
Howell	McNary	Robinson, Ind.	Walsh
Johnson	Mayfield	Sackett	Warren
Jones, N. Mex.	Means	Schall	Watson
Jones, Wash.	Metcalf	Sheppard	Williams
Kendrick	Neely	Shipstead	Willis
Keyes	Norris	Shortridge	
King	Oddie	Simmons	
La Follette	Overman	Smith	

The PRESIDING OFFICER. Seventy-seven Senators having answered to their names, there is a quorum present.

Mr. NEELY. Mr. President, permit me to preface my remarks with the observation that, like the Sabbath, the seventeenth amendment to the Constitution of the United States was made for man, and not man for the amendment; that the amendment was made for the people of the United States, including the people of the State of North Dakota, and not the people of either the Nation or the State for the amendment.

Also permit me to predict that if Mr. NYE is denied his seat in the Senate a majority of the votes effectuating this unfortunate consummation will be supplied by the so-called "stand-pat" or "old-guard" Republican Members of this body.

Mr. President, the question before the Senate may be concisely stated thus:

Is GERALD P. NYE entitled to a seat in this body as a Senator from the State of North Dakota?

The facts and circumstances from which the question arises are as follows:

On the 22d day of June, 1925, a vacancy occurred in North Dakota's representation in the Senate by reason of the death of Senator Edwin F. Ladd, of that State.

On the 14th day of November, 1925, the chief executive of North Dakota, Gov. A. G. Sorlie, appointed Mr. GERALD P. NYE, whose personal qualifications are unquestioned, temporarily to fill the vacancy.

It is provided in the credentials issued by Governor Sorlie that Mr. NYE shall represent the State of North Dakota in the Senate "until the vacancy caused by the death of EDWIN F. LADD is filled by election, duly called for June 30, 1926." Thus Mr. NYE's membership in the Senate is in any event limited to the brief term of 7 months and 16 days. The length of this term is in striking contrast to that of the terms of other appointees now occupying seats in this Chamber. For example, the distinguished senior Senator from Massachusetts and the all-powerful and equally successful chairman of the Republican National Committee has been given by appointment membership in the Senate for a term extending from the 13th day of November, 1924, to election day (the 2d day of November), 1926.

A majority of the members of the Committee on Privileges and Elections, to which Mr. NYE's appointment was referred, have reported that the appointee is not entitled to a seat in the Senate on the ground that—

> the Governor of North Dakota had no authority under the Constitution of the United States and the constitution and laws of the State of North Dakota to make the appointment.

On the other hand, a minority of the members of the committee believe that the constitution and statute law of the State of North Dakota in effect at the time Mr. NYE's credentials were issued fully authorized Governor Sorlie to make the appointment.

Manifestly the question at issue is exclusively one of law. The law directly or indirectly involved consists of the following:

(1) The last clause of Article V of the Constitution of the United States.

(2) That part of the seventeenth amendment to the Constitution of the United States which provides for the filling of vacancies which may occur in the representation of any State in the Senate.

(3) Section 78 of the constitution of North Dakota.

(4) Section 696 of the Code of North Dakota, as amended by chapter 249 of the session laws of 1917.

That part of Article V of the Constitution of the United States above mentioned is, in effect, a solemn mandate to the Members of this body to seat Mr. NYE. It is in the following explicit language:

> No State, without its consent, shall be deprived of its equal suffrage in the Senate.

That part of the seventeenth amendment to the Constitution of the United States, which is the "storm center" of this contest, is as follows:

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election, as the legislature may direct.

The first of the above-quoted authorities demonstrates the fact that the people, in adopting the Constitution, not only intended that every State in the Union should at all times be fully represented in the United States Senate, but that they were also so solicitous to prevent their intention in this particular from being defeated that they wrote into the organic law an express prohibition against depriving any State of its representation, or, in other words, of either of its representatives in this body.

With laudable fidelity to the foregoing provision of the Constitution of the United States, in commendable obedience to the constitution and the statute law of his own State, and in a praiseworthy effort to obtain for North Dakota the full representation in this body to which it is justly entitled, Governor Sorlie appointed Mr. NYE a Member of the United States Senate.

Unhappily, a majority of the Committee on Privileges and Elections are as unwilling for the appointee to occupy his seat as the husbandmen in the parable were determined that the heir of the householder should not possess his father's vineyard.

Those opposed to the seating of Mr. NYE contend that his appointment is invalid for the reason that the Legislature of North Dakota has not, since the adoption of the seventeenth amendment, passed a law conferring upon the governor the power to make the appointment under consideration.

It is submitted by the minority of the committee that this contention is invalid and that for many reasons it should not be sustained.

The purpose of the seventeenth amendment was obviously not to deprive any State of its representatives in the Senate, but to provide for representation in this body that would be more responsible to the people and responsive to the will of the people than representatives in the Senate formerly were when chosen by the legislatures of the States as provided by the original organic law.

If interpreted according to the spirit which actuated its adoption, and in such a manner as to make effective its manifest intention, the following language of the seventeenth amendment, "the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election," will become, in substance:

The executive of any State, if authorized by law to do so, may make temporary appointments until the people fill the vacancies by election.

In adopting their constitution in 1889, the people of North Dakota not only anticipated the contingency which has recently arisen in their State, but the adoption of the seventeenth amendment as well, and happily provided in appropriate language the means of avoiding a vacancy in North Dakota's representation in the United States Senate.

Section 78 of the constitution of North Dakota, which has been in effect continuously since 1889, is as follows:

When any office shall from any cause become vacant, and no mode is provided by the constitution or law for filling such vacancy, the governor shall have power to fill such vacancy by appointment.

Mr. BAYARD. Mr. President——

The PRESIDING OFFICER. Does the Senator from West Virginia yield to the Senator from Delaware?

Mr. NEELY. I yield.

Mr. BAYARD. I call the attention of the Senator from West Virginia to the fact that prior to the adoption of the constitution of the State of North Dakota in 1889 there was in existence an instrument known as the Federal Constitution, adopted in 1788. Under that Constitution provision was made for the filling of vacancies in the office of United States Senator. That provision was in substance—I do not give the exact words—that the executives of the several States might fill the vacancies in the event of death or resignation; so that long before the adoption by North Dakota of its constitution in 1889 provision was made for the filling of a vacancy in the office of United States Senator.

When North Dakota became a State, and so became entitled to representation in the Federal Senate by two Senators, and after those two Senators were duly inducted into office under the provisions of the Federal Constitution, had there been a vacancy prior to the adoption of the seventeenth amendment, does the Senator think the clause which he has just quoted from the North Dakota constitution was in any way an enabling clause giving to the Governor of North Dakota any power to fill a vacancy in the office of United States Senator?

Mr. NEELY. I think the provision I have quoted authorized the governor to make an appointment to fill a vacancy in the Senate.

Mr. BAYARD. In other words, he had a power over and above the power given to him by the Federal Constitution?

Mr. NEELY. I certainly do not think that this provision of the constitution of North Dakota subtracted anything from the governor's power. I think that it simply meant what it said, and that it gave him authority to fill vacancies in the circumstances specified.

Mr. BAYARD. I take it for granted that the Senator will admit that the Governor of North Dakota, prior to the adoption of the seventeenth amendment, had full power under the Federal Constitution to fill a vacancy in the United States Senate. Unquestionably that is true.

Mr. NEELY. I do not doubt that that is a correct statement of the law.

Mr. BAYARD. And he had that power under the Federal Constitution. Now, does the Senator say that he had a dual power to make the same appointment?

Mr. NEELY. I do not.

Mr. BAYARD. Does the Senator say that he had an added power, then?

Mr. NEELY. He needed no added power prior to the adoption of the seventeenth amendment.

Mr. BAYARD. Does the Senator say that if no power had been conferred by the Federal Constitution he would have had power to make the appointment?

Mr. NEELY. If there had been no Federal Constitution there would have been no United States Senate, and consequently no power of appointment to fill a vacancy in that body.

Mr. BAYARD. That is not my question, if the Senator please. My question is this: If, prior to the adoption of the seventeenth amendment, the Federal Constitution had made no grant of power to the State executive to fill a vacancy in the office of United States Senator, does the Senator think that the mere conferring of power by the State constitution would have given him any such power?

Mr. NEELY. I do not.

Mr. BAYARD. The Senator does not?

Mr. NEELY. I do not.

Mr. BAYARD. That is what I want to know.

Mr. SMITH. Mr. President, let me ask a question. If that power had not been delegated to the Federal Government, surely it either inhered in the people, or, through the people, was in the governor, in view of the fact that there was no delegated power to say how a vacancy should be filled, certainly it was reserved to the State, and the governor might have had that power.

Mr. BAYARD. Mr. President, may I interrupt just for a moment to answer the suggestion of the Senator from South Carolina? He presents a very extraordinary proposition. He says that merely because a State adopts a certain constitution——

Mr. SMITH. No; I have no reference to the constitution.

Mr. BAYARD. Let me finish this. The Senator says that because a State adopts a certain constitution, and in that constitution clothes the governor with power to fill all State offices, that in itself grants a power, other things being equal, to fill the office of United States Senator, in the event that the Federal Constitution does not give him that power. One State may adopt a constitution giving that power, and another State may not.

Mr. SMITH. Oh, no. If the Senator will allow me, all I had reference to was this, that there was no provision in the Constitution for or against an appointment to fill a vacancy in the office of Senator or Representative. Certainly the power rested with the people of the several States to express themselves as they saw fit, but in the event—as happened—that the Federal Government, through the power delegated by the several States, had said that the governors should have the power to fill these vacancies, the mere fact that the Legislature of North Dakota reenacted in effect what was already granted to the governor, as the Senator said, did not add to or subtract from the power.

Mr. BAYARD. Mr. President, how will the Senator answer the statement made by the Senator from West Virginia a moment ago in answer to my question, that in the event that the Federal Constitution had made no provision for the appointing power in the Government, he was of the opinion that the State constitution could not give the governor such power?

Mr. NEELY. Mr. President, proceeding from the point at which I was interrupted, attention is invited to the fact that sec-

tion 18 of the constitution of North Dakota authorized Governor Sorlie to fill the vacancy occasioned by the death of Senator Ladd, because all concede that if the Legislature of North Dakota, composed of the servants of the people of that State, had enacted a law since the adoption of the seventeenth amendment conferring upon the governor the power which section 78 of the constitution of North Dakota confers upon him, then there could be no question about the validity of Mr. NYE's appointment. But surely the masters or principals, the people of North Dakota, have a right to do for themselves, through the instrumentality of a constitution adopted by their own votes, whatever their servants or agents, the members of the Legislature of North Dakota, could do for them. Therefore section 78 of the constitution of North Dakota conferring upon the governor power to fill all vacancies, for the filling of which no mode is provided by the constitution or law of the State, authorized Governor Sorlie to appoint Mr. NYE.

But the objection is made in the report of the majority of the committee that the provisions of section 78 of the constitution of North Dakota do not apply in this case, because a mode for filling the vacancy in question is provided by the seventeenth amendment. But the majority obviously misconceive the meaning of the language "no mode is provided by the constitution or law for filling such vacancy" when they construe it to mean "provided by the Constitution of the United States." Of course, the Constitution and the law referred to in section 78 of the constitution of North Dakota were, respectively, the constitution and the law of that State. Any other interpretation would be absurd, for the reason that, subject to a very few exceptions, State authorities have nothing to do with the enforcement of the Federal Constitution or Federal law.

But the minority of the committee concede that section 78 of the constitution of North Dakota is applicable to this case only in the event of there having been no mode provided by the constitution or law of the State for filling the vacancy under consideration.

Passing from the constitutional provisions of North Dakota to a consideration of its statutes, we find the following in chapter 249 of the session laws of 1917:

Be it enacted by the Legislative Assembly of the State of North Dakota—

(1) That section 696 of the compiled laws of North Dakota for 1913 be amended and reenacted as follows:

"SEC. 696. Vacancies, how filled: All vacancies, except in the office of a member of the legislative assembly, shall be filled by appointment as follows:"

* * * * * * *

4. In State and district offices, by the governor.

The seventeenth amendment to the Constitution was ratified in the year 1913. Thus, the foregoing law was enacted by the Legislature of North Dakota four years after the ratification of the seventeenth amendment, when every member of the legislature must be presumed to have been familiar with the amendment's requirements. The minority contend that this statute of North Dakota clothed Governor Sorlie with ample authority to appoint Mr. NYE a member of the Senate.

But the majority protest that—

(1) The legislature did not intend that the language "all vacancies, except in the office of a member of the legislative assembly," should include a vacancy in the representation of North Dakota in the United States Senate; and

(2) That this law is not applicable to the case of the appointment of a United States Senator for the reason that he is neither a State nor a district officer.

To the first of these objections we reply that the expression "all vacancies" is as broad and as comprehensive as it is capable of being made by the English language. If "all vacancies" do not comprehend a vacancy in the United States Senate, then we challenge the majority to suggest any language that would include a vacancy in the Senate.

As to objection No. 2, we, of course, concede that a Member of the Senate is not a district officer, but as to the contention that he is not a State officer within the meaning of North Dakota's legislative enactment, we appeal from the report of the majority of the committee to decisions of the Supreme Court of the United States, which we conceive to be considerably higher authority and to afford a safer precedent for us to follow.

In the Burton case (202 U. S. 344) the Supreme Court says:

While the Senate, as a branch of the legislative department, owes its existence to the Constitution, and participates in passing laws that concern the entire country, its Members are chosen by the State legislatures and can not properly be said to hold their places under the Government of the United States.

And in the case of the United States *v.* Mouat (124 U. S. 307), the following appears:

Unless a person who is in the service of the Government holds his place by virtue of an appointment by the President, or of the courts of justice, or heads of departments, authorized by law to make such appointment, he is not strictly an officer of the United States.

It is submitted that if a United States Senator is not strictly an officer of the United States, he must necessarily be an officer of the State from which he is elected or appointed.

Dr. William Bennett Moore, of Harvard, in his interesting and instructive book, The Government of the United States, says:

The States, as such, are equally represented by each having two Members in the upper branch of Congress, the Senate. The people of the several States, on the other hand, are represented by a varying number of Representatives in the lower branch of Congress. In both cases the unit of representation is the State. Congress, accordingly, is a bicameral convention of State envoys; its Members are officers of the State from which they come, and are not officers of the National Government.

In view of the foregoing it is submitted that for the purposes of this case, at least, a United States Senator is a State officer within the meaning of chapter 249 of the 1917 session laws of North Dakota, and that, by enacting the statute before quoted the Legislature of North Dakota fully complied with the provision of the seventeenth amendment relative to empowering the governor to make temporary appointments to fill vacancies in North Dakota's representation in the Senate, and that, accordingly, Governor Sorlie's act in appointing Mr. NYE to a seat in the Senate was explicitly authorized by law.

Thus, those who oppose the seating of Mr. NYE are, so far as their objections have been assigned of record, confronted with the dilemma—if the North Dakota statutory law under consideration provides for the filling of a vacancy in the State's representation in the United States Senate, then the majority of the committee have no case; but if the law in question does not apply to the filling of a vacancy in the United States Senate, then, in the language of section 78 of the constitution of the State, "No mode is provided by the constitution or law (of North Dakota) for filling such vacancy," and section 78 of the constitution itself becomes applicable to the case, its condition that, "No mode is provided by the constitution or law for filling such vacancies," is fulfilled, and Governor Sorlie is, by the section under consideration, empowered to fill by appointment the vacancy occasioned by the death of Senator Ladd.

With the desperation of drowning men clinging to straws, the majority contend that neither section 78 of the constitution of North Dakota, nor the State statute we have considered, are applicable to the case before the Senate, for the further reason that the constitutional provision was adopted long before the seventeenth amendment was ratified, and that the statute, being substantially the reenactment of a preexisting law of North Dakota, is simply a continuation of the old law, which was passed many years before the seventeenth amendment was ratified.

The majority supplement this contention with the additional one that the seventeenth amendment contemplates and requires an affirmative act of the legislature subsequent to the adoption of the seventeenth amendment in order to give effect to the provision of the amendment sanctioning appointments by the chief executive of the State temporarily to fill vacancies in the United States Senate. This contention is not only invalid but upon analysis it becomes absurd.

Mr. MCKELLAR. Mr. President——

The PRESIDING OFFICER. Does the Senator from West Virginia yield to the Senator from Tennessee?

Mr. NEELY. I do, with pleasure.

Mr. MCKELLAR. Let us suppose that the Legislature of the State of North Dakota had, in the very words of the seventeenth amendment, provided that the governor be empowered to make temporary appointment to the office of United States Senator; that that was already the law in the State of North Dakota. Was it argued that it would be necessary, under the seventeenth amendment, for another legislature to reenact the same law, and say that the purpose of reenacting that law was to carry out the provisions of the seventeenth amendment? Surely no one could have made an argument of that kind.

Mr. NEELY. That, I regret to say, was most emphatically contended. I believed then, and I believe now, that the contention is absurd.

A sound principle or a sensible theory can be applied from zero to infinity without becoming ridiculous. Let us apply this test to the contention in question.

Suppose that the Legislature of North Dakota had been in session the day before the seventeenth amendment was ratified, and that in anticipation of the ratification it had passed a law in the most appropriate language empowering the governor of the State to make temporary apointments to fill vacancies in the United States Senate.

Suppose that this law had been made effective from the day of its passage, and that after enacting it the legislature adjourned.

The following day the seventeenth amendment was ratified and became effective.

If on the third day after the enactment of the law a vacancy in the State's representation in the United States Senate had occurred by death, will any sane man contend that it would have been necessary for the governor, at an expense of many thousands of dollars to the taxpayers of North Dakota, to reconvene that legislature for the sole purpose of reenacting the identical law that had been passed but three days before in order to empower the chief executive of the State to make a temporary appointment to fill the vacancy in the Senate?

The bare statement of this question renders it preposterous and makes an answer superfluous.

But high legal authority speaks to the point in the following language:

> Where an amendment of the constitution of this State, providing for the election of sheriffs by the people, directed also, that this should be done in such manner as should be prescribed by law it was held that this clause did not limit the exercise of power on this subject to a legislature convened after the amendment was consummated. (Pratt *v.* Allen, 13 Conn. 119.)
>
> The act approved March 18, 1873, "to set apart one-half of the public domain for the support and maintenance of public schools," was evidently passed in anticipation of the adoption of the amendment to the constitution allowing land donations to railroads, and it was competent in the legislature to so enact; it is therefore constitutional. (G. B. & C. Ry. Co. *v.* Gross, 47 Tex. 428.)

Mr. President, as nature abhors a vacuum, so government abhors a vacancy in office. Supplementary to this observation is the admitted fact that the applicable rules of construction require that constitutional provisions and statutory enactments relative to executive appointments to fill vacancies should be construed, if possible, so as to effectuate the intention rather than to adhere to the letter of either the organic or statutory law.

> In the main, it may be said that the Executive's power of provisional appointment is given for the purpose of providing against the temporary lapse of a governmental function as a result of there being in office no legal incumbent to exercise that function. It would seem, therefore, that, whenever possible, the statutory and constitutional provisions should be so construed as to diminish rather than increase the possibility of official vacancies. (22 R. C. L. 442.)

In rendering the famous antitrust decisions the Supreme Court of the United States adopted the rule of reason. In passing upon Governor Sorlie's act in appointing Mr. NYE, and the latter's right to a seat in the Senate, the Members of this body should at least be as liberal with Mr. NYE as the Supreme Court has been with the trusts. The application of the rule of reason to the case before us will result in Mr. NYE's being seated by an overwhelming majority.

Mr. BAYARD. Mr. President, may I ask the Senator a short question?

Mr. NEELY. Certainly.

Mr. BAYARD. If I understood the argument of the Senator from West Virginia correctly, his proposition is this, that inasmuch as the seventeenth amendment was pending for some time previous to its adoption by the necessary number of State legislatures, it would be deemed that the legislatures of the several States had knowledge of it——

Mr. NEELY. O, Mr. President, everyone knows that Andrew Johnson, a Senator from Tennessee, in 1860 introduced a resolution providing for the popular election of United States Senators, and that the question was pending from then until through the long-continued efforts of the Democratic Party the seventeenth amendment was finally adopted in 1913.

Mr. BAYARD. Assume that the Legislature of the State of North Dakota, in its session just prior to the time when the necessary number of legislatures ratified the amendment, had seen fit to use almost the exact language of the seventeenth amendment, authorizing the Governor of North Dakota to make an appointment in the event of a vacancy; but suppose that the ratification did not come until three or four months after the passage of such an act by the North Dakota Legislature. Does the Senator think that the passage of such an act by the North Dakota Legislature would be a constitutional or a valid act empowering the Governor of the State of North Dakota to make an appointment thereafter in the event of a vacancy?

Mr. NEELY. Why would it not be?

Mr. BAYARD. I will answer the question with a question, if I may. What power had the North Dakota Legislature at that time to pass any such act?

Mr. NEELY. Does the distinguished Senator from Delaware contend that a legislative body can not anticipate a constitutional amendment by passing a law that will be valid after the amendment has been ratified?

Mr. BAYARD. In anticipation of a constitutional amendment?

Mr. NEELY. Yes.

Mr. BAYARD. Yes; I do.

Mr. NEELY. Then let me urge the able Senator from Delaware to read the cases of Pratt *v.* Allen (13 Conn. 119) and the G. B. & C. Ry. Co. *v.* Gross (47 Tex. 428), from which I previously quoted and thus be convinced that at least two courts of last resort have decided that his contention is invalid. Would not those decisions change the Senator's opinion?

Mr. BAYARD. I will say frankly to the Senator that they would not. They are very interesting cases, but they are sporadic cases at best.

Mr. NEELY. I am reminded of the classical couplet—

> The two-edged tongue of mighty Zeno who,
> Say what one would, could argue it untrue.

Mr. JONES of New Mexico. Mr. President——

The PRESIDING OFFICER. Does the Senator from West Virginia yield to the Senator from New Mexico?

Mr. NEELY. I do.

Mr. JONES of New Mexico. Is it not true that the Volstead Act——

Mr. NEELY. I fervently hope that the Senator from New Mexico is not going to involve us with the prohibition question. [Laughter.]

Mr. JONES of New Mexico. Is it not true that the Volstead Act was passed before the eighteenth amendment became a part of the Constitution of the United States and in anticipation of that constitutional amendment?

Mr. NEELY. The Volstead law was passed before the eighteenth amendment went into effect; but may I say to the Senator from New Mexico that I hope the statute of North Dakota in question will be better enforced in this case than the Volstead law is being enforced in certain places that I shall not name.

Mr. JONES of New Mexico. I simply referred to it in support of the statement which the Senator from West Virginia is making as being a precedent established by the Congress of the United States.

Mr. NEELY. I am very much obliged to the able Senator for the illustration he has supplied me. I think it is in point.

Mr. JONES of New Mexico. I did not intend to bring in here any discussion of the advisability, or otherwise, of the Volstead law.

Mr. NEELY. Mr. President, there has been much quibbling in the debate in the committee and on the floor about the difference in the phraseology of the statute of the State of North Dakota and the language of the seventeenth amendment to the Federal Constitution—the latter providing for "temporary appointments," while the former provides for the "filling of vacancies."

Let me observe that there is here involved the same "substantial" difference as that which existed between Lewis Carroll's delightful creations known as Tweedledum and Tweedledee. No one could possibly tell them apart.

It is unfortunate that hypercritical lawyers, in arguing their cases, find it more important to preserve the dead letter of an instrument than to defend the rights of a live people. It is a tragedy that they frequently crucify a principle in order to apotheosize a technicality. It is a calamity that it is impossible for them to learn that the law, including the seventeenth amendment to the Constitution of the United States, was made for the people, and not the people for the law.

Let us decide this case according to the spirit of the constitution and the law of North Dakota, and give Mr. NYE his seat. Let us repudiate the decision rendered several months ago by the stand-pat Members on the other side of the Chamber, when the senior Senator from New Hampshire [Mr. MOSES], as reported by the press, sent a brief to the Governor of North

Dakota, notifying him, in effect, that no appointment he might make to fill the vacancy under consideration would be honored by the Senate.

Why was such a decision made? Because the Governor of North Dakota is a member of the Progressive Farm Labor Party and not a stand-pat Republican. I can readily understand why the distinguished Senator from New Hampshire would not expect Governor Sorlie to commission a reactionary to represent the State of North Dakota in the United States Senate. But I know of no reason why we should help the old guard to rob the people of North Dakota of their representative in this body.

Mr. President, the minority of the committee believe that Mr. NYE is thoroughly qualified in every particular to discharge the duties of a United States Senator, and that the spirit of the seventeenth amendment, the spirit of the constitution, and the spirit of the statute law of North Dakota all demand that we give him his seat.

But if constitutional provisions and amendments and statutory enactments all fail to move the members of the "old guard" of the Republican Party to help us seat Mr. NYE, then let me appeal to the Republican Senators for the same liberality of action in this case that they manifested in deciding the Newberry case, when they gave to a man a seat in this Chamber under circumstances never before countenanced by any legislative body.

Let me remind those who voted for Newberry, some of whom have not taken a single progressive step in the memory of man, that they established a precedent in that case which consistency demands that they follow by voting on every occasion, and under all circumstances, for the seating of any man or woman who knocks for admission to this Chamber.

I shall now proceed to resurrect Banquo's ghost, which ought to make numerous distinguished gentlemen on the other side of the aisle turn as pale as Macbeth at the feast. Let me remind you of the iniquity of the Newberry case, and of the fact that when he presented his credentials here, polluted with moral turpitude as black as the darkness of midnight, you accepted them and made him a Member of this body.

Please permit me to refresh your recollection of the infamy of the Newberry case by reading from a speech of one of the wisest, most statesmanlike, and most progressive Republican Members that ever sat in this body. I refer to the late Robert M. La Follette, of Wisconsin, whose brilliant son now occupies his father's seat in this Chamber, and who, incidentally, has demonstrated his popularity among the people of Wisconsin, to the utter confusion of his enemies and the unspeakable delight of his friends. I read from volume 62, part 13, of the CONGRESSIONAL RECORD of the Sixty-seventh Congress, as follows:

> Mr. President, these are the facts that will hereafter be accepted as proven and established for all time to come after the Senate has given its decision on the case now under consideration:
>
> (1) That a sum of money admitted to have been at least $195,000, and alleged with ample supporting proof to have reached between $250,000 and $300,000, was expended in the primary election in Michigan in 1918 for the purpose of controlling the result of the Republican primary.
>
> (2) That the expenditure of this sum of money did control the result of the primary, the candidate in whose behalf it was spent having been declared nominated by a narrow margin over his opponent.
>
> (3) That a substantial portion of this great sum of money was expended for purposes specifically declared illegal by the laws of Michigan.
>
> (4) That this money was expended in violation of the State law limiting expenditures to $3,750, and in violation of the Federal corrupt practices act then in force limiting expenditures to $10,000.
>
> (5) That this money was raised and expended by a committee the organization of which was suggested, the chairman of which was selected, and the methods and policies of which were approved by Truman H. Newberry, the sitting Member.
>
> (6) That Mr. Newberry was, throughout the campaign, in daily communication—by letter, telegraph, and telephone—with the campaign manager actively engaged in the expenditure of this large sum of money whose selection he had approved, whose methods he repeatedly indorsed and ratified, and to whose activity in the campaign, by his own admissions, he owed his nomination and subsequent election.
>
> (7) That the raising and the expenditure of the vast sum that is admitted to have been expended in this contest in Michigan, and the methods employed in its expenditure, were so open and so notorious as to put the sitting Member upon full notice.

Those are the things that Senator La Follette said had been proved against Newberry.

Then the resolution was submitted and a vote on it was had. The resolution is in the following words—and I regret that the distinguished senior Senator from Ohio [Mr. WILLIS], on whose motion the resolution was amended in an important particular, is not present:

> *Resolved*, (1) That the contest of Henry Ford against Truman H. Newberry be, and it is hereby, dismissed.
>
> (2) That Truman H. Newberry is hereby declared to be a duly elected Senator from the State of Michigan for the term of six years commencing on the 4th day of March, 1919, and is entitled to hold his seat in the Senate of the United States.
>
> (3) That whether the amount expended in this primary was $195,000, as was fully reported or openly acknowledged, or whether there were some few thousand dollars in excess, the amount expended was in either case too large, much larger than ought to have been expended.
>
> The expenditure of such excessive sums in behalf of a candidate, either with or without his knowledge and consent, being contrary to sound public policy, harmful to the honor and dignity of the Senate, and dangerous to the perpetuity of a free government, such excessive expenditures are hereby severely condemned and disapproved.

And here is the list of immortals, including the present distinguished Presiding Officer of the Senate [Mr. MCNARY] who voted to adopt that resolution and give Newberry a seat.

Messrs. Cameron, Cummins, Curtis, Edge, Ernst, Fernald, Gooding, Hale, Harreld, Kellogg, Keyes, Lenroot, McKinley, McLean, McNary, Oddie, Pepper, Phipps, Shortridge, Smoot, Stanfield, Wadsworth, Warren, Watson of Indiana, Weller, and Willis.

Let me ask these Republican Senators who voted to seat Newberry, including my good friend from Indiana [Mr. WATSON], who is a member of the Committee on Privileges and Elections, when their names are called on the Nye case, if they are going to strain at a North Dakota gnat after they swallowed a Michigan camel in the Newberry case. [Laughter.]

Mr. WATSON. Mr. President, will the Senator yield?

The PRESIDING OFFICER. Does the Senator from West Virginia yield to the Senator from Indiana?

Mr. NEELY. With pleasure. I hope I am going to get an answer to my question.

Mr. WATSON. The Senator is going to have an answer as quickly as I can give it to him.

Mr. President, I was a member of the Committee on Privileges and Elections and a member of the subcommittee that heard the Newberry case from start to finish. I listened to every iota of testimony adduced, and, on my honor and my responsibility as a Senator I came to the conclusion that he should be seated, and so reported from the subcommittee to the full committee. I defended that view on the floor of the Senate.

I have no apology to make for my vote in that case. I believed then I was right, and I believe now that I acted in accordance with my own conscience and in accordance with the circumstances of the case then presented, and, with what I now know of that case, if I had it to do over again I would vote precisely as I voted then.

Just what relationship there is between the Newberry case and the Nye case is not apparent. We are not seeking to "expel" NYE. It is only a legal question as to whether the Governor of North Dakota had any authority to appoint him. My own view is—and I have come to it reluctantly—that the governor had no authority to appoint him. I listened to the evidence; I listened to the arguments before the committee, as my friend from West Virginia did, and I have come to that conclusion. There can not be any politics in it. It can not matter to this side of the Chamber, and not much to the other side, as to what happens, because it is my view that if Mr. NYE shall be excluded upon this legal question, when June comes, in all probability he will be nominated and elected and sent back here. Therefore, there is nothing involved in it except a mere question as to whether or not, acting under his authority constitutionally, the governor had the right to appoint. That is the sole question involved.

There is no proposition of turpitude involved here; there is no proposition of corruption involved here; there is nothing that in any wise relates to the Newberry case, as it was then portrayed by my friends on the other side of the Chamber and on every stump throughout the whole Republic. And at the end of that campaign, I may say to my friend, notwithstanding all the efforts of those who were opposed to Mr. Newberry, the country went Republican just the same, and in the whole United States there was not a vote lost on the Newberry case to those who had voted to seat him here.

I lived in Indiana, right next to Mr. Newberry, and I never lost a vote on that proposition in Indiana, because the people believed that I had voted in accordance with my own conscientious convictions, as I did, and as all those who sat over here did.

Mr. NEELY. No; if the Senator will pardon me, the people of Indiana voted the Republican ticket. Evidently they were not thinking about qualifications when they were casting their votes in the Senator's State.

Mr. WATSON. No; I will say to my friend that the people in Indiana have voted the Democratic ticket, except when they have had proper candidates, quite as often as they have voted the Republican ticket.

Mr. NEELY. I sincerely hope that they will be fortunate in nominating some proper candidates in the State in the future, not for the purpose of ousting my distinguished friend—because there is nobody in the Senate for whom I entertain a more friendly feeling—but simply to provide us some additional progressive votes.

Mr. WATSON. I thank the Senator.

Mr. NEELY. But, Mr. President, what my good friend has just said shows that my prediction is going to be fulfilled. Every newspaper reader knows that the distinguished gentleman is catalogued as one of the most conservative Republican members of this body. So we know now that the old guard of which he is a member is not going to permit Mr. NYE to occupy his seat.

Mr. SHORTRIDGE. Mr. President——

The PRESIDING OFFICER. Does the Senator from West Virginia yield to the Senator from California?

Mr. NEELY. I do.

Mr. SHORTRIDGE. May I ask the distinguished Senator from West Virginia whether his animadversions aimed at our side of the Chamber apply with equal force to his distinguished colleages upon the other side who, I have reason to believe, will agree with us or many of us that the Governor of North Dakota was without authority to appoint Mr. NYE? Why does the Senator aim his shafts at us, suffering his colleagues yonder—whom I respect so highly—utterly to escape? And, if the Senator will pardon this interruption——

Mr. NEELY. I shall be glad to answer.

Mr. SHORTRIDGE. I have thought, up to entering the Chamber a few moments ago—apologizing for not being here all the while the Senator was addressing the Senate——

Mr. NEELY. It is a matter of great regret to me that the Senator was not here.

Mr. SHORTRIDGE. It has been a great loss to me that I was not here.

Mr. NEELY. I concede that.

Mr. SHORTRIDGE. I had thought that we were concerned immediately with determining whether under the seventeenth amendment to our Constitution and the laws of North Dakota the governor had the power to appoint a very honorable gentleman a Senator of the United States.

Mr. NEELY. May I interrupt the Senator there long enough to say that he is getting so much in this question that I shall have to answer it by sections; and I wish to answer the last section now, if the Senator will permit me——

Mr. SHORTRIDGE. Yes, sir.

Mr. NEELY. Has not the distinguished Senator long since learned that Goldsmith accurately described the Senate in his immortal lines, in which he said:

> Where village statesmen talked with looks profound
> And news much older than their ale went round,

And that we talk about everything here?

Mr. SHORTRIDGE. I have; and I remember still further lines from the same poem by Oliver Goldsmith.

Mr. NEELY. I knew the Senator would.

Mr. SHORTRIDGE. I remember this, and—with great respect for West Virginia I say it—I think it applies to one of its representatives here:

> In arguing, too, the parson owned his skill,
> For e'en though vanquish'd he could argue still.

Mr. NEELY. The Senator has robbed me of the latter part of my quotation, which I expected to supply after the Senator had taken his seat; but I wish to answer his first question now by saying that I have not directed my shafts at those on this side for the reason that so far as I know, and so far as the RECORD discloses, no Democratic Senator voted to seat Newberry. I am talking now to Senators who did vote to seat him, and did seat him over the bitter protest of every Democrat and every Progressive in this body.

Mr. SHORTRIDGE. If the Senator will pardon me once more——

Mr. NEELY. I am delighted to yield.

Mr. SHORTRIDGE. I rarely indulge in interruptions. I do not often do so because rarely does an interruption add to the advancement of an argument, and generally it is designed to embarrass or frustrate or divert.

Mr. NEELY. Oh, it will not embarrass me in the least.

Mr. SHORTRIDGE. I repeat, therefore, and the question is simple: First—and I approach the subject with the very highest respect for Mr. NYE. There is nothing here that involves his character, nor the good character or high standing of the Governor of North Dakota. I have assumed, I say, that the question was simply this: Did the governor, under the seventeenth amendment, which is the supreme law of our land, and the constitution and the statutes of North Dakota, have the power to make this appointment? That is the only question; and may I ask the Senator if he will be good enough in his argument to respond to this series of questions:

First, the seventeenth amendment is the supreme law of the land.

Second, the constitution of North Dakota, and the several statutes enacted by its legislature must, of course, conform to, and in a sense be subservient to, obedient to, the seventeenth amendment to the Constitution. Now, did the legislature carry out the provisions of the seventeenth amendment in the act which has been here discussed so much?

Mr. NEELY. Mr. President, if the Senator had been present he would know that that question has already been answered.

Mr. SHORTRIDGE. It may be so.

Mr. NEELY. I addressed myself to it before the Senator honored me by listening to my discussion.

Mr. SHORTRIDGE. Our contention, as a purely intellectual matter, is that the only power that the governor would have would be to make a temporary appointment, and the power to call an election so that the people of the State could elect a Senator for the unexpired term. If the Senator has answered these questions satisfactorily, I shall look over his remarks; but does the Senator realize that his contention is defeating the very purpose of the seventeenth amendment, the high purpose——

Mr. NEELY. The Senator, I hope, will let me answer some of his questions. I can not remember all of them. Let me answer that, and then I will yield for as many as the Senator wishes to ask.

Mr. SHORTRIDGE. I shall be glad if the Senator will answer the last one.

Mr. NEELY. To deprive Mr. NYE of his seat in the Senate would be to defeat the purpose of the seventeenth amendment, which was made not to rob States of their representation in this body, but to give them representatives who would be more responsive to the peoples' will.

Mr. SHORTRIDGE. Will not the Senator admit that the dominant purpose of the seventeenth amendment was to give the people of the States the right to choose their Senators?

Mr. NEELY. Let me answer that before the Senator asks another question.

Mr. SHORTRIDGE. Certainly.

Mr. NEELY. I will admit that.

Mr. SHORTRIDGE. Now, why are you defeating that purpose?

Mr. NEELY. Wait. I will not yield for the Senator to make a speech. I will yield for him to ask me questions provided he will let me answer them. If he will not wait, I will not yield at all.

Of course I understand the purpose of the seventeenth amendment; and if the Senator from California had been in the Chamber he would know that I called attention to the fact, or at least indicated, that the spirit of the amendment has been religiously carried out in this case by limiting Mr. NYE's appointment to the short term of 7 months and 16 days. The distinguished senior Senator from Massachusetts [Mr. BUTLER] and the chairman of the Republican National Committee received his appointment to a seat in this body for two years lacking eleven days under a statute that you have held was valid, and I have no doubt that it is; but the Governor of North Dakota was so thoroughly actuated by the spirit of the amendment that instead of attempting to give to Mr. NYE a term of two years in the Senate, as the Governor of Massachusetts gave to Mr. BUTLER, he gave him a term of only 7 months and 16 days.

Mr. SHORTRIDGE. A final observation.

The VICE PRESIDENT. The Senator will address the Chair, and will let him put the inquiry, under the rule, as to whether the Senator yields.

Mr. SHORTRIDGE. Mr. President, we have been engaged in a colloquy here, and we do not each have time to pause and ask permission.

The VICE PRESIDENT. That is necessary under the rule.

Mr. SHORTRIDGE. I respectfully dissent.

The VICE PRESIDENT. Does the Senator from West Virginia yield to the Senator from California?

Mr. NEELY. Yes, sir; if you please, Mr. President. I grant the Senator authority to interrupt me ad libitum, if the Chair will permit.

Mr. SHORTRIDGE. I want to say to the Senator from West Virginia——

The VICE PRESIDENT. Does the Senator from West Virginia yield to the Senator from California?

Mr. NEELY. I will yield for a question, provided the Senator will wait until I answer it before he asks another.

Mr. SHORTRIDGE. Well, proceed. I will not interrupt the Senator.

Mr. NEELY. Mr. President, there have been two interruptions—one by the distinguished Senator from Indiana [Mr. WATSON], who I am afraid has again left the Chamber after having asked his questions and made his observations, and another by the equally distinguished Senator from California [Mr. SHORTRIDGE], both of whom voted to seat Mr. Newberry. Their answers, their observations, and their colloquies with me have all demonstrated that it is harder for a poor man to "get by" the "old guard" on the other side of the Chamber with credentials from a progressive governor than it is for a camel to go through the eye of a needle, or a rich man to enter the kingdom of heaven, and by the same tokens we are forced to conclude that, when a Newberry, who has corrupted the voters of a State and spent $195,000 to purchase a seat in the Senate, arrives, he is welcomed on the other side of the Chamber with open arms and glad acclaims.

Mr. SHORTRIDGE. Mr. President——

The VICE PRESIDENT. Does the Senator from West Virginia yield to the Senator from California?

Mr. NEELY. Gladly.

Mr. SHORTRIDGE. This is what I wish to ask the Senator: I understand that the purpose of the seventeenth amendment was to give the people of the several States an opportunity, and an early opportunity, to elect their own Senators. My question is this: Does not the distinguished Senator now addressing the Senate think that the Governor of the State of North Dakota—who acted in the utmost good faith, I have no doubt—is himself defeating the will of the people and the spirit of the seventeenth amendment by not calling an election in North Dakota and letting the people proceed within 30 or 60 days to elect their Senator? That is what I mean when I say that I think the Senator from West Virginia and the Governor of North Dakota are defeating the spirit of the seventeenth amendment.

Mr. NEELY. Mr. President, the Governor of North Dakota is not defeating the will of the people of his State. He is trying to carry it out, and he will succeed, unless my friends on the other side prevent him from doing so; and if the spirit of the seventeenth amendment is not effectuated in this case, it will be not because of the Governor of North Dakota; it will be because of the votes of Republican Senators.

There is a good reason why the Governor of North Dakota did not call an election immediately. During the present Republican administration the people of North Dakota have become so poor that they can not afford to have a special election to fill a vacancy in the United States Senate. There are thousands of North Dakota citizens who are bankrupt and weary of "keeping cool with Coolidge." There is an election already called, under the law, to be held on the 30th day of next June. That will be the earliest general election in the State of North Dakota, and Governor Sorlie, in order to save the taxpayers of his State the expense of holding a special election to fill this vacancy, the cost of which I have heard estimated as high as $200,000, has appointed Mr. NYE to fill it for the short term of 7 months and 16 days.

In conclusion, if I can not move your sense of fairness, let me appeal to your sense of fear, and warn you that if you outrage the spirit of the Constitution of the United States and the law of the State of North Dakota by ousting Mr. NYE from this Chamber in the circumstances of this case, you will thus do more in an hour to solidify the progressive sentiment of the Northwest against the Republican Party and its reactionary candidates in 1926 and 1928 than you could do in a year in any other way.

If I were thinking only of the political advantages to be gained from this situation, I should, of course, hope that you old-guard Republicans would do just what you have determined to do, and that is to refuse to give Mr. NYE his seat. But I can not condescend to a consideration of political strategy in this case. My duty under my oath of office to support and defend the Constitution—and by that I mean the spirit of the Constitution—and my duty to be a servant of the people of the United States, including the people of North Dakota, instead of a slave of a political party or the rubber stamp of a political machine impel me to vote to seat Mr. NYE.

While I suppose many will scoff at the suggestion that there could be any sentiment in the Senate, I nevertheless am unable to refrain from saying that in addition to the obligations which the spirit of the Constitution and the law, and the facts in the case, impose upon me to vote to seat Mr. NYE I am also conscious of another impulse—which, of course, would not be controlling if I were not convinced that Mr. NYE is entitled to membership in this body—and that impulse is the offspring of my thoughts of a wife and three children of the appointee, who, in one of the plainest homes in the State of North Dakota, are to-day hoping and praying that the husband and the father may for a few short months be permitted to enjoy the cherished distinction of being a Member of the United States Senate. My conscience would not be clear, and I should not sleep well to-night when I think of my own, whom I love much more than my life, if I had failed to cast a vote to enable Mrs. Nye to declare, "My husband is a Member of the highest law-making body in the land," and her little ones to say in the lisping accents of childhood, "Our father has the honor of being a Member of the United States Senate," an honor which is but one step removed from that of the Presidency of the Republic—the most exalted office in all the world.

Mr. WALSH. Mr. President, it was not my purpose to take any part in this debate. I had intended to content myself with voting my convictions, leaving the discussion of the very important questions involved to members of the committee charged with the inquiry in the first instance and to Senators who have listened to the debate and otherwise informed themselves.

I have been persuaded, however, merely to express my views concerning the question by reason of the fact that there have appeared in at least two papers in North Dakota statements, one to the effect that I was to lead the fight in favor of Mr. NYE, the other to the effect that I was to lead the fight against Mr. NYE. I am highly complimented by my friends in North Dakota who seem to think that my views about the matter may be of some consequence to the inquiry.

But I should not like to have those same friends—and I have many in that State—believe that having led some one to the conclusion that I was to take a certain attitude with respect to the matter I had been prevailed upon thereafter to keep still and vote the other way. I shall merely state the course of reasoning by which I have arrived at the conclusion which seems to be irresistible in this matter, and that is that the Governor of North Dakota had no authority under the constitution and statutes of that State to make the appointment.

I regret this conclusion exceedingly. I had the opportunity to converse for a short while one day with Mr. NYE, and I am glad to say he made a very favorable impression upon me, and I have no doubt would make a very excellent representative from that State in this body and an acquisition to it. But, Mr. President, regardless of any technical construction of statutes, if I had any clear idea that the people of North Dakota had consciously invested the governor of that State with the power to appoint in case of this kind, I should not hesitate for a moment to give expression to their desires in the matter, even though the language in which they expressed it were technically inexact.

It is perhaps not known to many here that I had a somewhat leading part in the contest over the seating of Frank P. Glass as a member of this body and of Henry D. Clayton, named originally for the place during the year 1913 and shortly after the seventeenth amendment became effective by ratification of the requisite number of States. I made the report from the committee, and I voiced my views about the matter on the floor of the Senate. I was convinced then that the Governor of Alabama had no power to make the appointment. I have been unable to distinguish the Nye case from that case. A further study of the subject, as is ordinarily the case, has confirmed me in the view that I then formed.

It may not be known to all that the Glass case differed from the present case in the respect that in that case two grounds were advanced in support of the validity of the appointment of Mr. Glass. One made the case identical with the present case, but there was another ground that appealed to many Senators which has no reference whatever to the Nye case.

It was contended by a number of the members of the committee and very stoutly argued upon the floor that the seventeenth amendment to the Constitution had no application whatever to the case of Mr. Glass, because he was appointed to fill a vacancy occasioned by the death of a Senator who had been elected prior to the time the amendment took effect, the argu-

ment being based upon the third paragraph of the seventeenth amendment, which reads as follows:

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as a part of the Constitution.

It was argued, and with no little force, that, so far as a vacancy occasioned by the death of a Senator who had been elected prior to the time the amendment took effect, the vacancy was to be filled, not under the amendment to the Constitution, but as provided by the old Constitution. That view was, as I recall, very forcefully presented by the senior Senator from Arkansas [Mr. ROBINSON]. It must be borne in mind in determining the meaning of the Senate in the close vote on the seating of Mr. Glass that many Senators voted in his favor under the argument so made to which I have adverted.

The other ground upon which the validity of the appointment in that case was made is like unto the ground here, namely, that there was a statute of the State of Alabama, passed in the year 1909, by which the governor of that State was authorized to fill any vacancies that might occur in State offices. The question arose, first, as to whether the statute enacted prior to the time the amendment took effect could be operative at all in the case, and, second, even if it were passed after that time, whether a statute authorizing appointment by the governor to fill vacancies in State offices would be applicable to a vacancy in the office of United States Senator. Upon that question I wrote the report, and expressed my view that a United States Senator was not a State officer and that the statute would not authorize the appointment. As I said, further reflection has convinced me of the soundness of that view.

In the first place, it was attempted to distinguish the Nye case upon the ground that a statute has been passed since the adoption of the seventeenth amendment, namely, in the year 1917, authorizing the legislature to fill a vacancy. But, as has been observed, that statute is simply a reenactment, with a slight change in regard to vacancies in the case of the office of the district or prosecuting attorney, and is a reenactment of a statute which existed for many years, and which was found in a revision of the code in 1913. Upon well-established rules, the statute reenacted must be given just exactly the same construction as was given the statute in its original form, except in respect to the particular in which it varies from the parent statute. So that if the statute in 1913 did not authorize the appointment of a United States Senator without subsequent action by the legislature, the enactment of the statute in 1917 would not be so effective and operative.

Mr. President, it would not make a bit of difference to me how inartfully the people of North Dakota, through their legislature, expressed their desire in the matter if they did consciously delegate this power to the governor. Under the original Constitution, the people, the source of all power, surrendered a portion of that power to the legislature of their States, respectively, and invested them with the power to elect United States Senators; but that system proved entirely unsatisfactory and gave rise, as is well known, to vast corruption and resulted in a very general demand that the people reinvest themselves with the power which they had thus reposed in the legislature in the enactment of the Constitution in the first place. So they did, and not only provided that Senators should be elected in the first instance by a vote of the people, but also provided that in case a vacancy should occur in the office of United States Senator the vacancy should be filled by the people of the State in an election held for that purpose. But then they provided that they might, if they saw fit to do so, invest their governor with the power to make a temporary appointment. It seems to me that that contemplates affirmative action on the part of the people of the State acting through their legislature with full knowledge of their right either to retain that power in their own hands or to give it to the legislature.

Something has been said to the effect that the legislature might not be in session, but it will be borne in mind that we have just exactly the same situation in the House of Representatives when a vacancy occurs there. It remains a vacancy until a special election can be called to fill the vacancy.

That this is the proper view of the constitutional provision I think is abundantly established by reason of the fact that practically every State has adopted such a statute. The statute of the State of North Dakota authorizing the governor to fill all vacancies in State offices, or generally to fill all vacancies, is not exceptional by any means. Nearly every State has exactly the same statute. Thus my State provides, by section 514 of the Revised Code of Montana, 1921, an old statute reenacted, as follows:

When any office becomes vacant and no mode is provided by law for filling such vacancy, the governor must fill such vacancy by granting a commission to expire at the end of the next legislative assembly or at the next election by the people.

But no one in the State of Montana thought that that would authorize the governor to fill a vacancy in the office of United States Senator, and so they provided in an entirely different provision, as follows:

When a vacancy happens in the office of one or more Senators from the State of Montana in the Congress of the United States the governor of this State shall issue under the seal of the State a writ or writs of election to be held at the next succeeding general State election to fill such vacancy or vacancies by a vote of the electors of the State: *Provided, however,* That the governor shall have the power to make temporary appointments to fill such vacancy or vacancies until the electors shall have filled them.

Some time ago upon another matter I had occasion to direct the collection of the statutes of every State in the United States upon the matter of filling vacancies occurring in the office of United States Senator, and, notwithstanding most of them carry this general statute authorizing the governor to fill vacancies, in nearly every case—there are a few States, I think possibly half a dozen at the outside, that have not legislated upon the matter at all—they have gone on and made a specific provision, as is here indicated, for filling vacancies of that character. I should say in this connection that that is apparently the view taken of the matter by the people of North Dakota as well, because my attention is called to a statute enacted as late as 1917 or perhaps a little later known as the "recall" statute, by which it is provided that a State officer, a congressional officer, or a district officer may be removed by the vote of the people of the State. As my recollection is, that was appealed to in order to remove the governor of that State at one time.

Whether the people of North Dakota could remove by operation of the recall a Member of this body or a Member of the other branch of Congress by an adverse vote I need not canvass at this time, but the point I am making is that when they came to pass that section they did not content themselves by saying that a State officer or district officer could be removed by recall, but in order to reach a Member of either House of Congress they provided further that congressional officers could be removed, indicating that in the judgment of the people of North Dakota a Member of either branch of Congress was not a State officer.

Mr. FRAZIER. Mr. President——

The VICE PRESIDENT. Does the Senator from Montana yield to the Senator from North Dakota?

Mr. WALSH. I yield.

Mr. FRAZIER. I would like to ask the Senator from Montana if the very fact that the 1919 session of the Legislature of North Dakota, which was comprised largely of the same members as the 1917 session, in passing the recall law and referring in that law to congressional officers did not put the meaning of the members of the State legislature there to the effect that the Members of Congress and the Members of the United States Senate were State officers and on a parity with State officers because they included them in the recall?

Mr. WALSH. I should say not. I should say they were not guilty of tautology by saying the same thing twice. If "congressional officers" were included within the designation "State officers," it would not be necessary to say so; it would be sufficient to say "State officers."

Mr. NORRIS. Mr. President——

The VICE PRESIDENT. Does the Senator from Montana yield to the Senator from Nebraska?

Mr. WALSH. I yield.

Mr. NORRIS. I am very much interested in the Senator's construction. I have read the statute, and I confess I get just exactly the opposite idea. I assume that the people of North Dakota never contemplated recalling an officer unless he were a State officer. It seems to me that is a fair assumption, for they would not be able to recall any officer who was not a State officer. Assuming that to be true, when they enumerated the list of officers subject to recall and included Members of the House of Representatives and Senators—whether they are State officers or Federal officers is not necessarily, in my judgment, determined by that—it seems to me that the people of North Dakota must have thought that they were State officers. If the Senator will read the statute, he will find that they enumerated all the others; but, if his idea is right, then they would have simply said State officers and said nothing else. Can the Senator for a moment believe that the people of

North Dakota had in mind that they could recall anybody who was not an officer of that State?

Mr. WALSH. I think so, clearly. I think the people of North Dakota felt that inasmuch as they elected congressional officers they could recall congressional officers, and they tried to do so.

Mr. NORRIS. They provided for it; there is no doubt about that.

Mr. WALSH. They put it in the law that they could recall State officers, that they could recall congressional officers, and could recall district officers.

Mr. NORRIS. They mentioned the officers, giving a list. There are quite a number of them.

Mr. WALSH. I have not the statute before me, but speak from recollection.

Mr. NORRIS. I may be wrong about that. It may be that they were enumerated in the way the Senator from Montana has indicated.

Mr. GEORGE. I hand the Senator from Montana a copy of the recall statute.

Mr. WALSH (examining). This is the act submitting the initiative statute to the people of the State, and, as I understand, it was adopted by the people. I will ask the Senator from North Dakota [Mr. FRAZIER] if that is not correct.

Mr. FRAZIER. That is true.

Mr. NORRIS. This is the way the initiative statute reads:

> The qualified electors of the State or of any county or of any congressional, judicial, or legislative district may petition for the recall of any elective, congressional, State, county, judicial, or legislative officer by filing a petition with the officer with whom the petition for nomination for such office in the primary election is filed demanding the recall of such officer.

Mr. SWANSON. Who passes on the petition? Who makes it operative?

Mr. WALSH. I suppose the number of electors who must sign the petition is fixed by the statute, and if the requisite number have signed the petition that an officer be recalled, then an election is held, and the recall depends upon the result of the election.

Mr. SWANSON. Mr. President——

The VICE PRESIDENT. Does the Senator from Montana yield to the Senator from Virginia?

Mr. WALSH. I yield.

Mr. SWANSON. As I understand, then, the State enacted that law and the State authorities fixed the conditions upon which the recall should be made?

Mr. WALSH. Yes, sir.

Mr. SWANSON. That is, the State of North Dakota determined the conditions upon which recalls should be made?

Mr. WALSH. Yes, sir.

Mr. SWANSON. Does the Senator have an idea that they thought they would have authority to make provision for recalling Federal officers?

Mr. WALSH. I can not think of anything else, because they have so provided. They provided for the recall of some officers other than State officers.

Mr. SWANSON. Would it be a strained construction to infer that in their minds they were State officers and that the State authorities had a right to deal with them?

Mr. WALSH. If they regarded them as State officers, they would not have put in "congressional officers" at all. It would have been sufficient to say "State officers."

Mr. SWANSON. If they thought that congressional officers were State officers and yet "congressional officers" was their legal designation, they might include them.

Mr. NORRIS. If they were not State officers, they were not subject to recall.

The VICE PRESIDENT. Does the Senator from Montana yield to the Senator from Nebraska?

Mr. WALSH. I yield to the Senator from Nebraska.

Mr. NORRIS. The Senator must admit, then, it seems to me, that the State of North Dakota had no authority to recall anybody who was not a State officer.

Mr. WALSH. That is my belief.

Mr. NORRIS. I agree with the Senator.

Mr. WALSH. If the Senator will pardon me, nevertheless, I believe that the people of North Dakota believed they had the right to recall them.

Mr. NORRIS. Of course, the Senator may be right about that; but I do not believe we ought to charge the people of North Dakota with being ignorant of what their own law provides.

Mr. WALSH. Excuse me; I scarcely think that is correct. Their law does not provide that at all. Their law can not recall a member of this or the other body, because the qualifications of members of either body are fixed by the Constitution of the United States.

Mr. NORRIS. Yes; I understand that; but, nevertheless, the Senator does believe that if they are State officers then they are subject to the laws of North Dakota?

Mr. WALSH. Unquestionably.

Mr. NORRIS. Yes. I can not conceive of the people of North Dakota putting into their law something they must have known was absolutely absurd. If they are Federal officers, and they thought they were Federal officers, they would be very foolish to put in the law a method of recall of such officers.

However, the question I really wanted the Senator to answer was this: It seems to me that the Senator and those who share his view are a little inconsistent to say now, when they are citing the recall statute, it is no good because it enumerates congressional officers, but when they consider the other statute, where the authority to appoint is given, to say that is no good because it does not enumerate congressional officers. It does not seem to me they are quite fair. The people of North Dakota may be entirely wrong and the Senator absolutely right, but at the same time it seems to me one can not get away from the construction that when they passed that law they themselves believed that Senators were State officers.

Mr. WALSH. I think they believed that they would not include Members of either House of Congress if they simply said "State officers," and in order to reach them they said also "congressional officers," under the belief that, having been empowered to elect these officers, they had the power to recall them.

But, Mr. President, I do not desire to enter into a discussion. I rose merely for the purpose of stating my view about the matter.

Mr. SMITH. Mr. President, may I ask the Senator a question?

The VICE PRESIDENT. Does the Senator from Montana yield to the Senator from South Carolina?

Mr. WALSH. I yield.

Mr. SMITH. The Senator enumerated those who would be subject to the recall, and, as I heard the Senator read the provision, it referred to district officers. Who comprise district officers, and how are they elected, and to whom are they subject?

Mr. WALSH. There are many such officers. We have special improvement districts of all kinds.

Mr. SMITH. I mean in North Dakota.

Mr. WALSH. I am speaking of North Dakota. They have there special improvement districts; they have drainage districts.

Mr. SMITH. The officers connected with such works are certainly State officers.

Mr. WALSH. Undoubtedly, and they are created by the authority of the State.

Mr. SMITH. Very good. The people of North Dakota differentiated even between State officers. They said, "State officers," "district officers," and "congressional officers," showing that the contention which the Senator from Nebraska made is probably the correct one, in that they differentiated between the terminology by using the words "State officers," "district officers," and so forth. We all agree that a State officer and a district officer, in so far as they are amenable to the State, are identically the same.

Mr. WALSH. Let me say I can not agree with the Senator, because the language is "Congressional, State, county, judicial, or legislative officers." Undoubtedly the words "State officer" are used here as referring to one who is elected by the people of the entire State; a county officer is doubtless one who is elected by the people of a county; and a judicial or legislative officer is one who is elected by a judicial or a legislative district.

Mr. SMITH. Yes. The only point that I wanted to make was this: The argument here has been that a congressional officer, including a Senator, was not in the contemplation of the North Dakota law a State officer. In the statute that has been called to the attention of the Senate they include the district officers by saying, "all State officers." As I recall the statute, it does not differentiate between them. Yet district officers are certainly State officers, and the right is claimed to recall them. A differentiation is made between the kind of State officers by name and congressional officers are put on an equal footing with district and State officers, indicating that they are in the contemplation of the legislature the same. Therefore, in construing the statute which we have invoked referring to vacancies, I maintain that in the contemplation of the legislature they meant to embrace all such officers as are included in the recall statute.

Mr. CARAWAY. Mr. President——

The VICE PRESIDENT. Does the Senator from Montana yield to the Senator from Arkansas?

Mr. WALSH. I yield.

Mr. CARAWAY. May I suggest, for whatever it is worth—the Senator from Montana is probably already familiar with it—that the same legislature that passed this act made provision for the nomination and election of State officers and for Representatives in Congress and United States Senators. They differentiated them in the election law as to the manner in which the names should be placed upon the ticket and how they should be elected. So at one time it seems the Legislature of North Dakota knew that a Senator and a Member of the House of Representatives were not State officers. They provided different means of putting them on the ballot and how they should be nominated, and that was done by the same legislature that enacted the other provision.

Mr. WALSH. That is in the election statute?

Mr. CARAWAY. Yes, sir.

Mr. WALSH. They did not content themselves with providing for State officers.

Mr. CARAWAY. Or county officers.

Mr. WALSH. Or county officers; but they provided for the election of State officers and Members of both Houses of Congress.

Mr. SMITH. I think they differentiated between county and State officers.

Mr. FRAZIER. Mr. President, will the Senator allow me to interrupt him?

The VICE PRESIDENT. Does the Senator from Montana yield to the Senator from North Dakota?

Mr. WALSH. I yield.

Mr. FRAZIER. The term "judicial officers" includes the supreme court judges, who in our State are elected at large and are State officers, the same as any other officers elected by the State.

Mr. WALSH. Doubtless the statute overlaps. They doubtless had in mind, however, the district judges.

I merely desire now to advert to the argument based upon the constitutional provision. That is more comprehensive in its character and provides that—

> When any office shall from any cause become vacant and no mode is provided by the constitution or law for filling such vacancy, the governor shall have the power to fill such vacancy by appointment.

That is the constitution of North Dakota as it was adopted away back in the year 1889. They were then providing a constitution for the State of North Dakota, and unquestionably for filling vacancies that should occur in offices created by or under authority of the State of North Dakota.

They were not providing for the filling of vacancies occurring in the legislative body of an entirely different sovereignty, albeit a sovereignty that bears some relation to that of the State of North Dakota.

It will be observed that every argument which applies to the Alabama statute of 1909 will apply equally to this constitutional provision having its origin in the year 1889. There is, however, a further answer to that argument, and that is that this provision of the constitution is the solemn and sovereign act of the people of the State of North Dakota, acting directly in the adoption of their constitution, without any interposition whatever by the Legislature of the State of North Dakota.

The seventeenth amendment, Mr. President, does not provide that the people of North Dakota may invest their governor directly with the power to appoint. It is only the Legislature of the State of North Dakota which, under the seventeenth amendment, is authorized to delegate this power to the governor; and there is a vast difference between the two. Under the old Constitution, it will be borne in mind, Senators were to be elected by the legislatures of the various States; and a man coming here prior to the adoption of the seventeenth amendment with a certificate that he had been elected at a general election by the electors of that State would obviously have no title at all to a seat in this body. So that, Mr. President, a power delegated to the Governor of North Dakota by virtue of the constitution adopted in 1889 can by no stretch of the imagination, as I take it, be considered as in conformity with a power conferred by this amendment of 1913, which invested the legislature with the power thus to delegate the appointing power to the governor of the State.

I want to say this also:

I do not think we get much light upon this question from the adjudications as to whether a particular officer is a State officer or is not a State officer. My esteemed friend the Senator from West Virginia [Mr. NEELY] had some amusement out of the question as to whether or not we are officers at all. He is not the first who met with that kind of a difficulty, because the Supreme Court of the United States in the case of Ex parte Yarbrough, to which I called attention in the report I made in the Glass case, said as follows:

> The day fixed for electing Members of Congress has been established by Congress without regard to the time set for election of State officers in each State.

And then they continue:

> The office [Members of Congress], *if it be properly called an office*, is created by the Constitution and by that alone.

In other words, Mr. President, the Supreme Court of the United States has found difficulty in classifying the place that we occupy as either an office of the State or an office of the United States. But, however that may be, I desire to say that I do not believe that any very satisfactory conclusion can be drawn from the decisions.

In United States against Burton the Supreme Court held that, considering the particular provision of the Constitution under consideration there, a United States Senator was not an officer of the United States. In the case of United States against Lamar, considering a statute of the United States, they held that a Member of Congress was a United States officer within the meaning of that particular statute. In every single case the question is, What did the legislature mean by that particular provision of the statute? A man may be an officer of the United States within the meaning of one statute and not at all be an officer of the United States within the meaning of an entirely different statute. So that those decisions do not help us much one way or the other.

Mr. FRAZIER. Mr. President——

The VICE PRESIDENT. Does the Senator from Montana yield to the Senator from North Dakota?

Mr. WALSH. I do.

Mr. FRAZIER. I should like to ask the Senator from Montana if the opinions of the Supreme Court to which he refers were unanimous opinions of the Supreme Court?

Mr. WALSH. I do not recall.

For the reasons I have thus stated in brief, Mr. President, I feel impelled, and I say reluctantly impelled, to vote against the seating of Mr. NYE.

Mr. GEORGE. Mr. President, I desire to discuss the case before the Senate, but at no very great length. I do not know what the feeling of the majority is with regard to the hour of adjournment.

Mr. CURTIS. If the Senator can conclude his remarks by 5 o'clock, I should like to have him proceed. If he can not, and wants to make one continuous speech, I should like to get a unanimous-consent order and then have an executive session.

Mr. GEORGE. I should hardly be able to finish by 5 o'clock, though I probably should not take much longer.

Mr. CURTIS. The Senator would prefer to wait until morning?

Mr. GEORGE. Yes.

Mr. CURTIS. Then, Mr. President, I ask unanimous consent that when the Senate concludes its business to-day it take a recess until 12 o'clock to-morrow.

The VICE PRESIDENT. Is there objection? If not, it is so ordered.

EXECUTIVE SESSION

Mr. CURTIS. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to, and the Senate proceeded to the consideration of executive business. After five minutes spent in executive session the doors were reopened.

RECESS

Mr. CURTIS. I move that the Senate take a recess, the recess being until to-morrow at 12 o'clock.

The motion was agreed to; and (at 4 o'clock and 42 minutes p. m.) the Senate, under the order previously made, took a recess until to-morrow, Saturday, January 9, 1926, at 12 o'clock m.

NOMINATIONS

Executive nominations received by the Senate January 8 (legislative day of January 7), 1926

PUBLIC HEALTH SERVICE

The following-named doctors to be assistant surgeons in the Public Health Service, to take effect from date of oath:

Jesse T. Harper.
Felix R. Brunot.
John W. Harned, jr.

The above-named doctors have passed the examination prescribed by law.

APPOINTMENT IN THE REGULAR ARMY

INFANTRY

William Schuyler Woodruff, late captain of Infantry, to be major of Infantry in the Regular Army, with rank from January 5, 1926.

PROMOTIONS IN THE REGULAR ARMY

TO BE COLONEL

Lieut. Col. Harry Cooper Barnes, Coast Artillery Corps, from January 3, 1926.

TO BE LIEUTENANT COLONELS

Maj. John Carlyle Fairfax, Infantry, from January 3, 1926.
Maj. Allan Francis McLean, Cavalry, from January 4, 1926.

TO BE MAJORS

Capt. Otto Wilhelm Gralund, Finance Department, from January 3, 1926.
Capt. Horace Grattan Foster, Finance Department, from January 4, 1926.

TO BE CAPTAINS

First Lieut. Jess Garnett Boykin, Cavalry, from January 3, 1926.
First Lieut. John Charles Macdonald, Cavalry, from January 4, 1926.

TO BE FIRST LIEUTENANTS

Second Lieut. Hugo Peoples Rush, Air Service, from January 3, 1926.
Second Lieut. John William Wofford, Cavalry, from January 4, 1926.

POSTMASTERS

ALABAMA

Mary J. Anthony to be postmaster at Guin, Ala., in place of M. J. Anthony. Incumbent's commission expired November 15, 1925.

ARIZONA

Ross H. Cunningham to be postmaster at Jerome, Ariz., in place of R. H. Cunningham. Incumbent's commission expired October 11, 1925.

Oregon D. N. Gaddis to be postmaster at Kingman, Ariz., in place of Charles Metcalfe. Incumbent's commission expired June 5, 1924.

Harry M. Wright to be postmaster at Somerton, Ariz., in place of H. M. Wright. Incumbent's commission expired October 11, 1925.

ARKANSAS

Walton J. Rice to be postmaster at Dumas, Ark., in place of P. J. Smith, deceased.

David A. Welsh to be postmaster at Huntington, Ark., in place of W. W. Ferguson. Incumbent's commission expired August 24, 1925.

CALIFORNIA

Ernest W. Dort to be postmaster at San Diego, Calif., in place of E. W. Dort. Incumbent's commission expired November 8, 1925.

COLORADO

Gertrude Powell to be postmaster at Rockvale, Colo., in place of Gertrude Powell. Incumbent's commission expired November 8, 1925.

CONNECTICUT

Phillip V. Schilling to be postmaster at Springdale, Conn., in place of W. A. Pratt, removed.

FLORIDA

George O. Jacobs to be postmaster at Lake City, Fla., in place of D. B. Raulerson, removed.

IDAHO

Harold P. Kahellek to be postmaster at Fernwood, Idaho, in place of J. K. Hood, resigned.

ILLINOIS

George E. Simmons to be postmaster at Avon, Ill., in place of G. E. Simmons. Incumbent's commission expired August 17, 1925.

IOWA

William W. Moore to be postmaster at Ainsworth, Iowa, in place of W. W. Moore. Incumbent's commission expired December 14, 1925.

Milton W. Knapp to be postmaster at Aurora, Iowa, in place of M. W. Knapp. Incumbent's commission expired November 18, 1925.

Wallace R. Ramsay to be postmaster at Belmond, Iowa, in place of W. R. Ramsay. Incumbent's commission expired December 22, 1925.

Miller C. Rhoads to be postmaster at Clarksville, Iowa, in place of M. C. Rhoads. Incumbent's commission expired November 22, 1925.

Harold I. Kelly to be postmaster at Early, Iowa, in place of H. I. Kelly. Incumbent's commission expired October 20, 1925.

Chester B. De Veny to be postmaster at New Hartford, Iowa, in place of C. B. De Veny. Incumbent's commission expired November 18, 1925.

Peter A. Basler to be postmaster at Worthington, Iowa. Office became presidential July 1, 1925.

KANSAS

William T. Flowers to be postmaster at Havensville, Kans., in place of N. O. Richardson. Incumbent's commission expired August 24, 1925.

Gladys D. Corns to be postmaster at Herndon, Kans., in place of G. N. Corns. Incumbent's commission expired October 25, 1925.

KENTUCKY

Harold M. Hardwick to be postmaster at Burnside, Ky., in place of A. F. Lewis, resigned.

Taylor P. Sewell to be postmaster at Campton, Ky., in place of T. P. Sewell. Incumbent's commission expired December 14, 1925.

Houghton T. Gardner to be postmaster at Upton, Ky., in place of R. L. Jenkins, resigned.

MAINE

Charles W. Farrington to be postmaster at Mexico, Me., in place of C. W. Farrington. Incumbent's commission expired November 23, 1925.

William F. Putnam to be postmaster at York Harbor, Me., in place of W. F. Putnam. Incumbent's commission expired November 15, 1925.

MARYLAND

Benjamin F. Woelper, jr., to be postmaster at Baltimore, Md., in place of B. F. Woelper, jr. Incumbent's commission expires January 25, 1926.

MASSACHUSETTS

Roy S. Bailey to be postmaster at Agawam, Mass., in place of C. W. Hastings, resigned.

David N. Wixon to be postmaster at Dennis Port, Mass., in place of D. N. Wixon. Incumbent's commission expired November 15, 1925.

Ursula G. Dehey to be postmaster at Hatfield, Mass., in place of H. L. Howard, resigned.

Charles E. Cook to be postmaster at Uxbridge, Mass., in place of C. E. Cook. Incumbent's commission expired December 22, 1925.

MINNESOTA

Axel P. Lofgren to be postmaster at Karlstad, Minn., in place of A. P. Lofgren. Incumbent's commission expired December 20, 1925.

George W. Fried to be postmaster at Luverne, Minn., in place of G. W. Fried. Incumbent's commission expired November 17, 1925.

Olaf M. Groven to be postmaster at Mentor, Minn., in place of O. M. Groven. Incumbent's commission expired November 23, 1925.

Olive O. Dahl to be postmaster at Pine River, Minn., in place of E. B. Dahl, deceased.

Arthur H. Rowland to be postmaster at Tracy, Minn., in place of A. H. Rowland. Incumbent's commission expired November 23, 1925.

MISSISSIPPI

Bessie M. Nickels to be postmaster at Artesia, Miss., in place of B. M. Nickels. Incumbent's commission expired October 5, 1925.

MISSOURI

Raymond E. Miller to be postmaster at Carl Junction, Mo., in place of R. E. Miller. Incumbent's commission expired November 23, 1925.

Edwin S. Brown to be postmaster at Edina, Mo., in place of E. S. Brown. Incumbent's commission expired December 21, 1925.

Karma K. Black to be postmaster at Fordland, Mo., in place of K. K. Black. Incumbent's commission expired December 21, 1925.

William A. Barris to be postmaster at Marionville, Mo., in place of W. A. Barris. Incumbent's commission expired November 9, 1925.

William F. Crigler to be postmaster at Nevada, Mo., in place of W. F. Crigler. Incumbent's commission expired November 23, 1925.

John F. Hamby to be postmaster at Noel, Mo., in place of J. F. Hamby. Incumbent's commission expired December 21, 1925.

Thomas O. Spillers to be postmaster at Otterville, Mo., in place of T. O. Spillers. Incumbent's commission expired December 21, 1925.

Evelyn S. Culp to be postmaster at Rocky Comfort, Mo., in place of E. S. Culp. Incumbent's commission expired December 19, 1925.

Isaac M. Galbraith to be postmaster at Walker, Mo., in place of I. M. Galbraith. Incumbent's commission expired December 19, 1925.

Edwin McKinley to be postmaster at Wheaton, Mo., in place of Edwin McKinley. Incumbent's commission expired December 22, 1925.

MONTANA

Henry C. Redman to be postmaster at Moore, Mont., in place of Roy Ross. Incumbent's commission expired November 23, 1925.

NEBRASKA

Harry H. Woolard to be postmaster at McCook, Nebr., in place of H. H. Woolard. Incumbent's commission expired October 17, 1925.

W. Monroe McDaniel to be postmaster at Minatare, Nebr., in place of J. W. Gilbert, resigned.

NEW JERSEY

Louis A. Streit to be postmaster at East Orange, N. J., in place of L. A. Streit. Incumbent's commission expired December 21, 1925.

Clarence H. Wilbur to be postmaster at Freehold, N. J., in place of C. H. Wilbur. Incumbent's commission expired May 20, 1925.

William E. Hartman to be postmaster at Grasselli, N. J., in place of W. E. Hartman. Incumbent's commission expired December 22, 1925.

S. Matilda Mount to be postmaster at Jamesburg, N. J., in place of S. M. Mount. Incumbent's commission expired December 21, 1925.

Samuel Locker to be postmaster at Parlin, N. J., in place of Samuel Locker. Incumbent's commission expired December 22, 1925.

Eleanor H. White to be postmaster at Plainsboro, N. J., in place of E. H. White. Office became presidential July 1, 1925.

NEW MEXICO

Ralph Gutierrez to be postmaster at Bernalillo, N. Mex., in place of Philip Jagels, resigned.

NEW YORK

Alfred Valentine to be postmaster at East Williston, N. Y., in place of E. J. Goodale, resigned.

George M. Atwell to be postmaster at Mountain Dale, N. Y., in place of G. M. Atwell. Incumbent's commission expired December 22, 1925.

Edgar M. Schanbacher to be postmaster at Newfane, N. Y., in place of J. W. Shaw, removed.

Frank G. Sherman to be postmaster at Oneonta, N. Y., in place of F. G. Sherman. Incumbent's commission expired December 20, 1925.

George W. Babcock to be postmaster at Ravena, N. Y., in place of G. W. Babcock. Incumbent's commission expired November 17, 1925.

Helen L. Wilcox to be postmaster at Shelter Island Heights, N. Y., in place of I. G. Duvall, resigned.

NORTH CAROLINA

Henry E. Lane to be postmaster at Tyner, N. C., in place of J. L. Baker, removed.

OHIO

Ira A. Danford to be postmaster at Buffalo, Ohio. Office became presidential July 1, 1925.

Effie L. Moore to be postmaster at Cleves, Ohio, in place of E. L. Moore. Incumbent's commission expired November 2, 1925.

John G. Daub to be postmaster at Torenton, Ohio, in place of H. B. Elliott, resigned.

OKLAHOMA

Rosa B. Britton to be postmaster at Cyril, Okla., in place of R. B. Britton. Incumbent's commission expired November 9, 1925.

Alta G. Stockton to be postmaster at Sparks, Okla., in place of A. G. Stockton. Incumbent's commission expired December 22, 1925.

PENNSYLVANIA

Craig M. Fleming to be postmaster at Chambersburg, Pa., in place of D. L. Greenawalt. Incumbent's commission expired October 8, 1925.

Paul A. Hepner to be postmaster at Herndon, Pa., in place of P. A. Hepner. Incumbent's commission expired December 20, 1925.

Anna M. Eisenhower to be postmaster at Intervilla, Pa. Office became presidential July 1, 1925.

Pearson H. Hinterleiter to be postmaster at Topton, Pa., in place of P. H. Hinterleiter. Incumbent's commission expired January 5, 1926.

PORTO RICO

Pedro Muniz Rivera to be postmaster at Manati, P. R., in place of Ramon Collazo. Incumbent's commission expired July 25, 1925.

SOUTH CAROLINA

Bryan A. Odom to be postmaster at McBee, S. C., in place of H. H. Watkins. Incumbent's commission expired October 3, 1925.

SOUTH DAKOTA

Myrtle M. Giles to be postmaster at Lane, S. Dak., in place of G. M. Small, resigned.

TEXAS

Leland S. Howard to be postmaster at Roscoe, Tex., in place of J. S. Sloan. Incumbent's commission expired August 24, 1925.

VERMONT

Lilla S. Hager to be postmaster at Wallingford, Vt., in place of W. F. Hager, deceased.

VIRGINIA

Walter C. Stout to be postmaster at Cumberland, Va., in place of W. C. Stout. Incumbent's commission expired November 23, 1925.

Robert B. Rouzie to be postmaster at Tappahannock, Va., in place of J. L. Henley. Incumbent's commission expired June 4, 1924.

Beronica Marstellar to be postmaster at Virginia Beach, Va., in place of B. G. Porter. Incumbent's commission expired October 20, 1925.

WASHINGTON

Rollie K. Waggoner to be postmaster at Bickleton, Wash., in place of R. K. Waggoner. Incumbent's commission expired January 5, 1926.

Roy H. Clark to be postmaster at Palouse, Wash., in place of R. H. Clark. Incumbent's commission expired October 19, 1925.

William L. Oliver to be postmaster at Rockford, Wash., in place of W. L. Oliver. Incumbent's commission expired November 23, 1925.

James E. Clark to be postmaster at Ryderwood, Wash. Office became presidential January 1, 1925.

WISCONSIN

Andrew Kaltenbach to be postmaster at Potosi, Wis., in place of Andrew Kaltenbach. Incumbent's commission expired December 15, 1925.

WYOMING

Blanche Sutton to be postmaster at Hulett, Wyo., in place of Blanche Sutton. Incumbent's commission expired November 17, 1925.

CONFIRMATIONS

Executive nominations confirmed by the Senate January 8 (legislative day of January 7), 1926

POSTMASTERS

ALABAMA

John G. Sanderson, Courtland.
Robert O. Spiegel, Falkville.
Robert M. Mahler, Loxley.
William A. Dodd, Nauvoo.
Moses B. Rushton, Ramer.
Daisy White, River Falls.

ALASKA

Elbert E. Blackmar, Ketchikan.

FLORIDA

James H. Boyd, Clermont.
William T. Graves, Cottondale.
Gerben M. De Vries, New Port Richey.
Leon E. Mizell, Punta Gorda.

IDAHO

Paul Bulfinch, American Falls.
Willard G. Sweet, Arco.
George Alley, Bancroft.
Clarence M. Oberholtzer, Burley.
Charles B. Mirgon, Cascade.
Dalton C. Rogers, Culdesac.
Walter E. Gorrie, Deary.
Owen D. Wilson, Hansen.
Lillie B. Young, Kuna.
Oren M. Laing, Meridian.
Frederick J. Rodgers, Midvale.
Francis M. Winters, Montpelier.
George S. Mitchell, New Meadows.
Hugh H. Hamilton, New Plymouth.
Ralph M. Castater, Parma.
Lewis N. Balch, Potlatch.
Esmeraldo C. Taylor, Rockland.
Kathryn M. Boss, Rogerson.
Benjamin E. Weeks, Shoshone.
Grace Eubanks, Winchester.

IOWA

Herschel H. Thornton, Adel.
William H. Hall, Allerton.
Frederick W. Werner, Amana.
Wallace R. Ramsay, Belmond.
Ella K. Holt, Blanchard.
James F. Temple, Bode.
Albert H. Dohrmann, Charlotte.
Mary B. Gibson, Emerson.

IOWA

Earl M. Skinner, Farnhamville.
Emil C. Weisbrod, Fenton.
Raymond F. Sargent, Fonda.
William Foerstner, High.
John F. Cagley, Ionia.
Martin A. Sandstrom, Kiron.
Martin A. Aasgaard, Lake Mills.
Charles J. Denick, Miles.
Carl Nielsen, Moorhead.
Chester B. De Veny, New Hartford.
Ulysses G. Hunt, Plymouth.
Iva McCreedy, Riverside.

MARYLAND

Gordon Durst, Barton.
Charles W. Miles, Forest Glen.
Calvin S. Duvall, Gaithersburg.
Joseph S. Haas, Mount Rainier.
Willis B. Burdette, Rockville.
Paul M. Coughlan, Silver Spring.

NORTH CAROLINA

Roscoe C. Tucker, Fairbluff.
Charles C. Hammer, Gibsonville.
Charles B. Moore, King.
Robert B. Dunn, Kinston.
John M. Pully, La Grange.
Henry T. Atkins, Lillington.
William L. Peace, Oxford.
Chester A. Hinton, Pomona.
William R. Anderson, Reidsville.

OKLAHOMA

John Johnstone, Bartlesville.
Curtis Murphy, Foss.
Albert L. Chesnut, Kingston.
William A. Kelley, Marshall.
Wesley Z. Dilbeck, Rocky.
Roscoe F. Harshbarger, Sperry.
Artie Sellars, Texola.
Omer G. Bohannon, Wister.
James S. Shanks, Wynona.

OREGON

Major G. Miller, Dayton.
Ruby O. Engelman, Ione.
John M. Jones, Portland.
Tony D. Smith, Union.

SOUTH CAROLINA

Allie J. Milling, Clinton.
S. T. Waldrop, Greer.
Henry J. Dunahoe, Hemingway.
David N. Baker, Olanta.
Tolbert O. Lybrand, Swansea.

TEXAS

Hugh T. Chastain, Alvarado.
Mamie E. Bonar, Aubrey.
Charles F. Wilson, Celina.
Delmont Greenstreet, Ennis.
Asa McGregor, Milano.
Cora E. Antram, Nocona.
Victoria Robertson, Olden.
Abel J. Durham, jr., Sabinal.
John B. White, Waller.

WASHINGTON

Oscar A. Kramer, Asotin.
Regina E. Blackwood, Bellevue.
Arnold Mohn, Bothell.
Horace S. Thompson, Cle Elum.
Frank A. McGovern, Concrete.
Elijah H. Nash, Friday Harbor.
Addie McClellan, North Bend.
James S. Edwards, Ritzville.
John A. White, Toppenish.
Cyrus F. Morrow, Walla Walla.
Ray Freeland, White Swan.

WISCONSIN

Desire J. Baudhuin, Abrams.
Andrew C. Redeman, Amberg.
Robert A. Elder, Argonne.
Frank J. Duquaine, Crivitz.
Marcus Hopkins, Dale.
David M. Enz, Denmark.
John E. Huff, Florence.
Edward M. Perry, Forestville.
Leland G. Clark, Greenleaf.
Douglas Hodgins, Hortonville.
Hannah Goodyear, Niagara.
Rollyn Saunders, Oconto Falls.
Julia D. Knappmiller, Pound.
Edward E. Pytlak, Pulaski.
Martin J. Jischke, Sister Bay.
Merton J. Dickinson, Tipler.

WYOMING

Edwin M. Bean, Casper.
Willis L. Eaton, Wolf.

HOUSE OF REPRESENTATIVES

FRIDAY, *January 8, 1926*

The House met at 12 o'clock noon.

The Chaplain, Rev. James Shera Montgomery, D. D., offered the following prayer:

Our blessed heavenly Father of light and life and the God of time and eternity, the world is Thine and yet Thou art near. We would wait to hear Thy voice and to feel Thy presence. We thank Thee that we are not the victims of chance and fate, but we live in Thy life and move in Thy strength. With us may the happiness and comfort of all be the object of each. Give us strength and courage to see clearly that right is right and wrong is wrong. Make us duly conscious that "the eyes of the Lord are in every place, beholding the good and the evil." Amen.

The Journal of the proceedings of yesterday was read and approved.

BEFORE AND AFTER THE ELECTION—A MODERN VERSION OF ÆSOP'S FABLE OF THE BAT

Mr. BERGER. Mr. Speaker, I ask unanimous consent to extend in the RECORD one of my speeches that I delivered on the floor of the House during the last Congress. I desire to revise it and send it out by mail.

The SPEAKER. The gentleman from Wisconsin asks unanimous consent to extend his remarks in the RECORD by printing a speech hitherto delivered on the floor of the House. Is there objection?

Mr. CONNALLY of Texas. Mr. Speaker, reserving the right to object, what is it about?

Mr. BERGER. About general conditions.

The SPEAKER. Is there objection?

There was no objection.

(Extension of speech of Hon. VICTOR L. BERGER, of Wisconsin, in the House of Representatives Saturday, January 31, 1925)

Mr. BERGER. Mr. Speaker and gentlemen of the House, Æsop tells a fable of the bat, who in the war between the quadrupeds and the birds posed as a quadruped or as a bird, according to which side was victorious. But the bat was found out and shunned by both sides ever after.